

Minnesota Practice Series

---

# Jury Instruction Guides—Civil

Minnesota  
District Judges  
Association

Michael K. Steenson  
Peter B. Knapp

---























# MINNESOTA PRACTICE SERIES™

Volume 4A

## MINNESOTA JURY INSTRUCTION GUIDES

Sixth Edition

CIVIL  
[CIVJIG]

Categories 60—94

Issued in November 2014

Prepared by the

MINNESOTA DISTRICT JUDGES ASSOCIATION  
COMMITTEE ON JURY INSTRUCTION GUIDES—  
CIVIL

MICHAEL K. STEENSON  
PETER B. KNAPP  
Reporters



THOMSON REUTERS™

*For Customer Assistance Call 1-800-328-4880*

MINNESOTA  
PRACTICE SERIES™

Volume 4A

© 2014 Thomson Reuters

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Nothing contained herein is intended or written to be used for the purposes of 1) avoiding penalties imposed under the federal Internal Revenue Code, or 2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

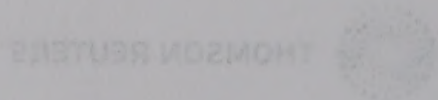
Categories 60—94

Issued in November 2014

Prepared by the

MINNESOTA DISTRICT JUDGES ASSOCIATION  
COMMITTEE ON JURY INSTRUCTION GUIDES—  
CIVIL

MICHAEL K. STEINSON  
PETER R. KRAFF  
Reporters



For Customer Assistance Call 1-800-328-6889

ISBN 44-0000000



# MINNESOTA DISTRICT JUDGES ASSOCIATION

---

## COMMITTEE ON JURY INSTRUCTION GUIDES CIVIL, SIXTH EDITION (2014) 2014.

---

Hon. Kathryn Messerich, Hastings, 1st Judicial District, Chair  
Hon. Robert Awsumb, St. Paul, 2nd Judicial District  
Hon. Robert Birnbaum, Rochester, 3rd Judicial District  
Hon. Regina M. Chu, Minneapolis, 4th Judicial District  
Hon. John Connolly, Senior Judge  
Hon. Mel Dickstein, Minneapolis, 4th Judicial District  
Hon. Frederick Grunke, St. Cloud, 7th Judicial District  
Hon. John Guthmann, St. Paul, 2nd Judicial District  
Hon. Eric. L.D. Hylden, Duluth, 6th Judicial District  
Hon. Marilyn Kaman, Senior Judge  
Hon. Dan Kammeyer, Senior Judge  
Hon. William Leary, St. Paul, 2nd Judicial District  
Hon. Ellen Maas, Stillwater, 10th Judicial District  
Hon. Kevin Mark, Red Wing, 1st Judicial District  
Hon. Janet Poston, Minneapolis, 4th Judicial District  
Hon. Marilyn Rosenbaum, Minneapolis, 4th Judicial District  
Hon. Martha Simonett, Hastings, 1st Judicial District

Michael K. Steenson

*Reporter*

Peter B. Knapp

*Reporter*

Stephen E. Forestell

*Director*

*Minnesota District Judges' Association*



# BAR COMMITTEE MEMBERS

---

## **Attorney Committee Liaison**

Kevin P. Curry

## **General Law Subcommittee**

Stephanie A. Ball

Clinton Collins

Mark A. Fredrickson

Molly J. Given

Peter W. Riley

Charles D. Slane

Brandon Thompson

Stephen Tillitt

## **Products Liability Subcommittee**

Nate Bjerke

Robert D. Brownson

Thomas J. Conlin

Kevin P. Curry

John J. Laravuso

Paul D. Peterson

Michael R. Strom

Cortney G. Sylvester

## **Professional Malpractice Subcommittee**

John M. Degnan

Mark Hallberg

John D. Kelly

Robert J. King

William J. Maddix

Paul Schweiger

Rolf E. Sonnesyn

Paula Vraa

## **Eminent Domain Subcommittee**

Stuart T. Alger

Allen D. Barnard

John E. Drawz



Marc J. Manderscheid

Michael E. Orman

Rob A. Stefonowicz

**Civil Damages Act Subcommittee**

Bruce P. Candlin

Amy J. Doll

James C. Erickson

Paul W. Godfrey

William S. Partridge

Hilary B. Wear

Cory P. Whalen

Todd Young

**Business Torts and Commercial Subcommittee**

Charles A. Bird

Thomas H. Boyd

Jonathan M. Bye

Peter W. Carter

Annamarie A. Daley

Donald C. Erickson

Bethany D. Krueger

Greg Weyandt

**Defamation and Privacy Subcommittee**

Shari L.J. Aberle

Steven P. Aggergaard

John M. Baker

Bruce J. Douglas

Adam A. Gillette

Michael Hall

David Bradley Olson

James R. Pielemeier

**Employment Subcommittee**

Francis E. Ballion

Howard L. Bolter

Craig A. Brandt

Mary L. Knoblauch

Nicholas G.B. May

Kerry Middleton

Jessica E. Schwie

BAR COMMITTEE MEMBERS

Adrianna Shannon

**Insurance Subcommittee**

Matthew T. Boos

Margo Brownell

Kevin Carpenter

T. Joseph Crumley

Skip Durocher

Brett W. Olander

Paul Rajkowski

Janet Stellpflug

**Real Estate Subcommittee**

Bryan Battina

Matthew T. Collins

Peter L. Crema

Laura A. Hage

Jerrie M. Hayes

Charles J. Schoenwetter

Joseph G. Springer





# Preface

The Minnesota Jury Instructions Guides—Civil have been published since 1963 and continuously revised and updated through the work of the Minnesota District Judges Association Civil Jury Instruction Guides Committee with valuable advice from the Minnesota State Bar Association Civil Litigation subcommittees. The Sixth Edition represents the culmination of two years of review and revision incorporating emerging areas of law.

A new category—Animal Law—Injuries Caused by Animals appears as Category 38. This section addresses the multiple theories of recovery in cases involving common law negligence, strict liability and statutory claims. Verdict forms encompassing these theories as well as cases with multiple defendants are included and can be tailored depending on the specific claims, parties and factual scenarios. The Comparative Fault Instruction found at CIVJIG 28.15 has been revised to reflect scenarios involving injury by animals.

Category 80—Professional Liability contains new instructions and special verdict forms on the “loss of a chance” theory of recovery which was adopted by the Minnesota Supreme Court in *Dickhoff v. Green*, 836 N.W.2d 321 (Minn. 2012). Under the loss of a chance theory, the reduction of a patient’s chance of recovery or survival is treated as a distinct injury.

Other new instructions include instructions and special verdict forms incorporating new amendments to the Whistleblower Act, instructions on slander of title and adverse possession, revised instructions on motor vehicle conversion in initial permission cases and revised instructions for interference with prospective economic advantage.

Contract instructions, previously located in the supplement are now incorporated into the main volume and include a new instruction on anticipatory breach. Finally, Category 75—Products Liability has been revised to reflect changes in the law dealing with design defect and primary assumption of the risk.

On behalf of the entire Civil JIG Committee, I recognize, with gratitude, the superb work of the Committee’s Reporters, Prof. Michael K. Steenson and Prof. Peter B. Knapp. The Reporters have steadfastly guided the Committee through many revisions and edits with their extensive knowledge of the law, patience, organization and humor. The Reporters have generously devoted hours to the Sixth Edition to provide a resource to trial judges and civil trial lawyers.

I also recognize the substantial contributions of Senior Judge Dan Kammeyer and Senior Judge John Connolly. We have all benefited from your wisdom and experience and we are grateful that you continue to do this important work.

The members of the Judge's Committee hope that you find the Sixth Edition to be a valuable and helpful resource in your Minnesota civil trial work.

KATHRYN D. MESSERICH  
CHAIR  
CIVIL JIG COMMITTEE  
MINNESOTA DISTRICT  
JUDGES' ASSOCIATION

## REPORTERS' ACKNOWLEDGMENTS

The administrative support of the William Mitchell College of Law was essential to the completion of the Sixth Edition of the civil jury instruction guides, including the meeting space for the many Committee meetings and the bar associations committees.

Several William Mitchell law students worked on the project as research assistants for the Reporters. We extend our thanks to them: Jevon Bindman, Brandon Boese, Elizabeth Brustad, Kyle Evens, Peter Rademacher, and Robert Yount.

We also acknowledge the work of the bar committee members. It was a privilege to work with them and we benefited greatly from their work on the Sixth Edition.

MICHAEL K. STEENSON  
PETER B. KNAPP  
*REPORTERS*  
CIVJIG COMMITTEE  
MINNESOTA DISTRICT  
JUDGES' ASSOCIATION





# WestlawNext™

## THE NEXT GENERATION OF ONLINE RESEARCH

WestlawNext is the world's most advanced legal research system. By leveraging more than a century of information and legal analysis from Westlaw, this easy-to-use system not only helps you find the information you need quickly, but offers time-saving tools to organize and annotate your research online. As with Westlaw.com, WestlawNext includes the editorial enhancements (e.g., case headnotes, topics, key numbers) that make it a perfect complement to West print resources.

- FIND ANYTHING by entering citations, descriptive terms, or Boolean terms and connectors into the WestSearch™ box at the top of every page.
- USE KEYCITE® to determine whether a case, statute, regulation, or administrative decision is good law.
- BROWSE DATABASES right from the home page.
- SAVE DOCUMENTS to folders and add notes and highlighting online.

SIGN ON: [next.westlaw.com](http://next.westlaw.com)

LEARN MORE: [store.westlaw.com/westlawnext](http://store.westlaw.com/westlawnext)

FOR HELP: 1-800-WESTLAW (1-800-937-8529)





## RELATED PRODUCTS

---

### MINNESOTA PRACTICE SERIES™

#### **Minnesota DWI Handbook**

Douglas V. Hazelton

#### **Civil Jury Instructions Companion Handbook**

Michael K. Steenson and Peter B. Knapp

#### **Civil Rules Annotated**

David F. Herr and Roger S. Haydock

#### **Civil Practice Forms**

Roger S. Haydock, David F. Herr and Sonja Dunnwald Peterson

#### **Appellate Rules Annotated**

Eric J. Magnuson, David F. Herr, and Sam Hanson

#### **General Rules of Practice Annotated**

David F. Herr

#### **Jury Instruction Guides—Civil**

Minnesota District Judges Association  
Committee on Jury Instruction Guides—Civil

#### **Methods of Practice: Civil Advocacy**

Roger S. Haydock and Peter B. Knapp

#### **Methods of Practice**

Steven J. Kirsch

#### **Criminal Law and Procedure**

Henry W. McCarr and Jack S. Nordby

#### **Jury Instruction Guides—Criminal**

Minnesota District Judges Association  
Committee on Jury Instruction Guides—Criminal

#### **Evidence**

Peter N. Thompson

#### **Courtroom Handbook of Minnesota Evidence**

Peter N. Thompson and David F. Herr

#### **Juvenile Law and Practice**

Robert Scott and John O. Sonsteng

**Family Law**

Martin L. Swaden and Linda A. Olup

**Employment Law and Practice**

Stephen F. Befort

**Minnesota Employment Laws**

Karen G. Schanfield

**Corporation Law and Practice**

John H. Matheson, Philip S. Garon and Michael A. Stanchfield

**Business Law Deskbook—Formation and Operation of Businesses and**

**Advanced Topics in Business Law**

Brent A. Olson

**Business Regulation in Minnesota—State and Federal**

Brent A. Olson

**Administrative Practice and Procedure**

William J. Keppel

**Insurance Law and Practice**

Britton D. Weimer, Clarence E. Hagglund and Andrew F. Whitman

**Insurance Statutes**

Britton D. Weimer, Clarence E. Hagglund and Andrew F. Whitman

**Trial Handbook for Minnesota Lawyers**

Ronald I. Meshbeshier and James B. Sheehy

**Minnesota Probate Deskbook**

Mary Alice Fleming and John R. Bedosky

**Real Estate Law**

Eileen M. Roberts

**Minnesota Real Estate Laws**

Eileen M. Roberts

**Collections Handbook**

Allan Zlimen

**Products Liability Law**

Michael K. Steenson, J. David Prince and Sarah L. Brew

**Elements of an Action**

David F. Herr

**Motions in Limine**

Lisa McGuire and David N. Finley

**OTHER THOMSON REUTERS PRODUCTS**

Minnesota Trial Objections  
**David F. Herr and Peter N. Thompson**

Minnesota Statutes Annotated

Minnesota Rules of Court—State and Federal

Minnesota Reporter

Minnesota Digest

Westlaw®

WestCheck®

---

Thomson Reuters® thanks you for subscribing to this product. Should you have any questions regarding this product please contact Customer Service at 1-800-328-4880 or by fax at 1-800-340-9378. If you would like to inquire about related publications or place an order, please contact us at 1-800-344-5009.



THOMSON REUTERS

Thomson Reuters  
610 Opperman Drive  
Eagan, MN 55123

[legalsolutions.thomsonreuters.com](http://legalsolutions.thomsonreuters.com)





## SUMMARY OF CONTENTS

---

### Volume 4

#### PART I TRIAL PROCESS

Category	Page
10. Duties of The Jury.....	3
12. Evidentiary Instructions .....	27
14. Burden of Proof .....	41
15. Multiple Parties.....	43

#### PART II GENERAL AREAS OF LAW

##### DIVISION A. CONTRACT AND WARRANTY

20. Contract.....	57
22. Warranty.....	117
23. Fiduciary Duty .....	153

##### DIVISION B. NEGLIGENCE

25. Fault and Culpability .....	173
27. Causation .....	219
28. Comparative Fault, Defenses, and Joint and Several Liability.	229

##### DIVISION C. VICARIOUS LIABILITY AND IMPUTED FAULT

30. Vicarious Liability—Business Entities .....	263
32. Imputed Fault—Motor Vehicle .....	301

#### PART III TOPICAL AREAS OF LAW

38. Animal Law—Injuries Caused by Animals .....	319
40. Business Torts—Unfair Competition .....	355
45. Civil Damage Act .....	381
48. Common Carriers .....	439
50. Defamation .....	455
52. Eminent Domain.....	539
55. Employer and Employee .....	577
57. Fraud and Misrepresentation .....	651
59. Insurance .....	685

**JURY INSTRUCTION GUIDES—CIVIL**

**Volume 4A**

**PART III TOPICAL AREAS OF LAW (CONTINUED)**

<b>Category</b>	<b>Page</b>
60. Intentional Torts.....	3
65. Motor Vehicles .....	71
70. Parents and Children .....	101
72. Privacy .....	115
75. Products Liability.....	139
80. Professional Malpractice .....	235
85. Property.....	315

**PART IV DAMAGES**

90. Damages .....	391
91. Personal Damage .....	409
92. Property Damage .....	451
94. Punitive Damages .....	459
Mortality Tables .....	477

**Table of Laws and Rules**

**Table of Cases**

**Index**

## TABLE OF CONTENTS

---

### Volume 4

#### PART I TRIAL PROCESS

##### CATEGORY 10. DUTIES OF THE JURY

CIVJIG	Page
10.15 Preliminary Instructions—Before Trial .....	3
10.20 Post-Trial Preliminary Statement—Duties of Judge and Jury .....	9
10.25 Statements of Counsel and Judge .....	12
10.30 Rulings on Objections to Evidence .....	14
10.35 Notes Taken by Jurors.....	16
10.40 Separation of Jury Recess of Jury .....	17
10.45 Deliberation and Return of Verdict .....	19

##### CATEGORY 12. EVIDENTIARY INSTRUCTIONS

CIVJIG	Page
12.10 Direct and Circumstantial Evidence .....	27
12.15 Evaluation of Testimony—Credibility of Witnesses .....	29
12.20 Evaluation of Deposition Evidence .....	31
12.25 Impeachment .....	33
12.30 Expert Testimony .....	36
12.35 Failure to Produce Evidence—Inference .....	38
12.40 Textbooks and Articles.....	40

##### CATEGORY 14. BURDEN OF PROOF

CIVJIG	Page
14.15 Burden of Proof.....	41

##### CATEGORY 15. MULTIPLE PARTIES

CIVJIG	Page
15.10 Two or More plaintiffs—Separate Claims .....	43
15.15 Two or More defendants (Joint and Several Liability, Several Liability, or Independent Liability) .....	45
15.20 Multiple defendants—Apportionment of Damages .....	47
15.25 Negligence—Fault—Has Been Answered by the Court .....	49



## **JURY INSTRUCTION GUIDES—CIVIL**

<b>CIVJIG</b>	<b>Page</b>
15.30 Directed Verdict .....	50
15.35 Settlement Agreements .....	51
15.40 Absent Parties .....	53

### **PART II GENERAL AREAS OF LAW**

#### **DIVISION A. CONTRACT AND WARRANTY**

##### **CATEGORY 20. CONTRACT**

<b>CIVJIG</b>	<b>Page</b>
20.10 Contract—Elements .....	71
20.15 Contract—Offer .....	74
20.20 Contract—Acceptance .....	76
20.25 Contract—Counteroffer .....	80
20.30 Offer—Rejection .....	81
20.35 Offer—Revocation .....	83
20.40 Offer—Consideration .....	85
20.41 Modification .....	88
20.42 Novation .....	89
20.45 Contract—Breach .....	91
20.46 Contract—Repudiation (Anticipatory Breach) .....	93
20.50 Promissory Estoppel .....	95
20.55 Duty of Good Faith and Fair Dealing .....	98
20.56 Defenses—Hindrance of performance .....	100
20.60 Damages .....	101
20.65 Mitigation of Damages—Contracts .....	104
20.75 Defenses—Unilateral mistake of fact .....	105
20.76 Defenses—Mutual mistake of fact .....	107
20.77 Defenses—Duress .....	109
20.79 Defenses—Frustration .....	110
20.80 Defenses—Impossibility or undue hardship .....	112
20.81 Defenses—Accord and satisfaction .....	114

##### **SPECIAL VERDICT FORMS**

<b>CIVSVF</b>	<b>Page</b>
20.90 Breach of Contract Cases .....	116

##### **CATEGORY 22. WARRANTY**

<b>CIVJIG</b>	<b>Page</b>
22.10 Express Warranty .....	119
22.15 Express Warranty by Description .....	122

## TABLE OF CONTENTS

CIVJIG	Page
22.20 Express Warranty by Sample or Model.....	123
22.25 Implied Warranty of Merchantability.....	125
22.30 Implied Warranty—Course of Dealing.....	129
22.35 Implied Warranty of Fitness for a Particular Purpose.....	131
22.40 Exclusion or Modification of Warranties.....	133
22.45 Implied Warranty—Exclusion or Modification by a Course of Dealing or Usage of Trade .....	136
22.50 Express Warranty—Breach .....	137
22.55 Implied Warranty of Merchantability—Breach .....	138
22.60 Implied Warranty of Fitness for a Particular Purpose—Breach.....	139
22.65 Causation.....	140
22.70 Warranty—Damages.....	141

## SPECIAL VERDICT FORMS

CIVSVF	Page
22.90 Warranty Accident Cases.....	149
22.92 Warranty Damages for Difference in Value, and Consequential and Incidental Damages .....	151

## CATEGORY 23. FIDUCIARY DUTY

CIVJIG	Page
23.10 Fiduciary Duty.....	153

## DIVISION B. NEGLIGENCE

## CATEGORY 25. FAULT AND CULPABILITY

CIVJIG	Page
25.10 Negligence and Reasonable Care—Basic Definition.....	183
25.12 Right to Assume Another's Good Conduct.....	186
25.14 Intoxication—Effect .....	188
25.16 Emergency Rule .....	189
25.35 Gross Negligence .....	192
25.37 Reckless—Defined .....	194
25.40 Willful Conduct.....	196
25.45 Violations of Nontraffic Statutes.....	199
25.46 Compliance With Statute.....	203
25.47 Evidence of Custom .....	204
25.48 Subsequent Remedial Measures .....	206
25.50 Res Ipsa Loquitur .....	209
25.52 Res Ipsa Loquitur and Specific Negligence as Alternative	

## **JURY INSTRUCTION GUIDES—CIVIL**

<b>CIVJIG</b>	<b>Page</b>
Theories .....	247
25.55 Fact of Accident Alone—No Inference of Negligence .....	215

### **SPECIAL VERDICT FORMS**

<b>CIVSVF</b>	<b>Page</b>
25.90 Liability of State or Municipality For Act of Official— Official Immunity in Issue .....	217

## **CATEGORY 27. CAUSATION**

<b>CIVJIG</b>	<b>Page</b>
27.10 Direct Cause .....	219
27.15 Concurring Cause .....	222
27.20 Superseding Cause .....	225

## **CATEGORY 28. COMPARATIVE FAULT, DEFENSES, AND JOINT AND SEVERAL LIABILITY**

<b>CIVJIG</b>	<b>Page</b>
28.15 Comparative Fault .....	239
28.25 Secondary Assumption of Risk .....	245
28.30 Primary Assumption of Risk .....	247

### **SPECIAL VERDICT FORMS**

<b>CIVSVF</b>	<b>Page</b>
28.90 Negligence; Comparative Negligence; One plaintiff, One defendant .....	250
28.91 Negligence; Comparative Fault; One plaintiff, Multiple defendants; Nonlitigants .....	252
28.92 Negligence; Comparative Fault; Two plaintiffs, One defendant .....	256
28.93 Negligence; Comparative Fault; Wrongful Death; One defendant, Surviving Spouse or Next of Kin .....	259

## **DIVISION C. VICARIOUS LIABILITY AND IMPUTED FAULT**

### **CATEGORY 30. VICARIOUS LIABILITY—BUSINESS ENTITIES**

<b>CIVJIG</b>	<b>Page</b>
30.10 Definition—Independent Contractor—Employee .....	267
30.15 Employee—Issue as to Scope of Authority—Negligence .....	270

## TABLE OF CONTENTS

CIVJIG	Page
30.20 Employee—Issue as to Scope of Authority—Intentional Wrong .....	273
30.25 Principal and Agent Relationship .....	279
30.30 Principal and Agent—Scope of Authority.....	281
30.50 Partnership—Partners—Definition.....	284
30.55 Partnership—Scope of Authority—Definition .....	286
30.60 Corporations—Liability for Conduct of Employees .....	288
30.65 Joint Enterprise .....	289
30.70 Joint Venture—Definition .....	291

### SPECIAL VERDICT FORMS

CIVSVF	Page
30.90 Vicarious Liability—Scope of Employment; Negligence.....	293
30.91 Vicarious Liability—Scope of Employment; Negligent Hiring or Retention.....	295
30.92 Vicarious Liability—Scope of Employment; Intentional Tort and Negligent Hiring or Retention .....	298

## CATEGORY 32. IMPUTED FAULT—MOTOR VEHICLE

CIVJIG	Page
32.10 Ownership of Motor Vehicle.....	302
32.15 Motor Vehicle Owner—Statutory Imputation of Liability—Consent—Adult.....	305
32.16 Motor Vehicle Owner—Statutory Imputation of Liability—Revocation of Consent—Adult .....	308
32.20 Motor Vehicle Owner—Statutory Imputation of Liability—Consent—Adult Deviation .....	310
32.25 Motor Vehicle Owner—Statutory Imputation of Liability—Consent—Child .....	313

### SPECIAL VERDICT FORMS

CIVSVF	Page
32.90 Permission to Use a Motor Vehicle.....	315

## PART III TOPICAL AREAS OF LAW

### CATEGORY 38. ANIMAL LAW—INJURIES CAUSED BY ANIMALS

CIVJIG	Page
38.10 Scienter Action—Domestic Animals.....	324
38.20 Scienter Action—Domestic Animals—Defenses.....	326



## **JURY INSTRUCTION GUIDES—CIVIL**

<b>CIVJIG</b>	<b>Page</b>
38.30 M.S.A. § 347.22 .....	329
38.40 M.S.A. § 347.22—Provocation .....	331
38.50 M.S.A. § 347.22—Acting Peaceably .....	332
38.60 M.S.A. § 347.22—Proximate Cause .....	333
38.70 Negligence .....	335
38.80 Keeping or Harboring .....	336
38.90 M.S.A. § 347.22—Absolute Liability .....	339
38.91 Negligence and M.S.A. § 347.22—Single plaintiff and Single defendant .....	342
38.92 Negligence and M.S.A. § 347.22—Two defendants .....	346
38.93 Common Law Strict Liability (Scienter) and Negligence ....	351

### **CATEGORY 40. BUSINESS TORTS—UNFAIR COMPETITION**

<b>CIVJIG</b>	<b>Page</b>
40.10 Defamation—Business Organizations .....	357
40.15 Product Disparagement .....	359
40.20 Trade Secret—Definition .....	361
40.25 Trade Secret—Misappropriation .....	363
40.30 Interference With Contractual Relationships .....	367
40.35 Interference With Prospective Economic Advantage .....	370
40.40 Justification .....	374
40.45 Interference With Contractual Relationships—Damages ....	379

### **CATEGORY 45. CIVIL DAMAGE ACT**

<b>CIVJIG</b>	<b>Page</b>
45.10 Illegal Sale—General .....	392
45.15 Illegal Sale .....	395
45.20 “Alcoholic Beverage”—Definition .....	397
45.25 “Intoxicated”—Definition .....	398
45.30 Causation .....	400
45.35 Contribution to Intoxication by plaintiff .....	403
45.40 Defense—Good Faith and Reasonable Reliance on Proof of Age of Person Under 21 .....	404
45.42 Responsibility for Conduct of Employee Authorized to Sell Alcoholic Beverages .....	406
45.45 Damages—Means of Support and Pecuniary Loss— Combined Instruction .....	407
45.50 Damages—Injury to a Minor .....	411
45.55 Damages—Bodily Injury .....	412
45.60 Common Law Social Host Liability .....	413
45.62 Statutory Social Host Liability—Person 21 or Older	

## TABLE OF CONTENTS

<b>CIVJIG</b>		<b>Page</b>
	Responsible for Intoxication of Person Under 21.....	444

### SPECIAL VERDICT FORMS

<b>CIVSVF</b>		<b>Page</b>
45.90	Civil Damage Act Liability .....	418
45.91	Civil Damage Act Liability—Bar and Intoxicated Person as defendants .....	420
45.92	Statutory Social Host Liability Because of Injury to Person Under 21 .....	423
45.93	Common Law Social Host Liability Because of Injury to Person Under 21 .....	426
45.94	Statutory and Common Law Social Host Liability .....	429
45.95	Common Law Social Host Liability—Injury to Third Person .....	432
45.96	Statutory and Common Law Social Host Liability—Injury to Third Person .....	434

### CATEGORY 48. COMMON CARRIERS

<b>CIVJIG</b>		<b>Page</b>
48.10	Common Carrier—Duty to Passenger Generally .....	442
48.15	Common Carrier—Definition of Passenger .....	444
48.20	Common Carrier—Duty—Place to Board and Alight—Stations .....	446
48.25	Common Carrier—Duty to Protect Passengers From Injury by Third Persons Other Than Passengers or Employees... ..	447
48.30	Duty of Common Carrier to Protect Passengers From Other Passengers .....	448
48.35	Common Carrier—Duty to Protect Passengers From Assault or Intentional Harm by Employees .....	449
48.40	Common Carrier—Conduct of Passengers—Right of Carriers to Eject .....	450
48.45	Negligence—Railroad Crossing—Duty of Person Crossing Tracks .....	452

### CATEGORY 50. DEFAMATION

<b>CIVJIG</b>		<b>Page</b>
50.10	Defamatory Communication .....	473
50.15	Publication .....	476
50.20	Slander <i>Per Se</i> .....	479
50.25	Truth .....	483
50.30	Absolute and Qualified Privileges .....	490
50.35	Qualified Privilege—Abuse—Actual Malice (Common Law	

## JURY INSTRUCTION GUIDES—CIVIL

<b>CIVJIG</b>	<b>Page</b>
Standard) .....	533
50.40 Actual Malice—Constitutional Standard .....	500
50.45 Defamation—Negligence.....	505
50.50 Presumed Damages .....	507
50.55 Defamation—Actual Damages .....	511
50.60 Defamation—Special Damage.....	513
50.65 Punitive Damages—Defamation.....	515

### SPECIAL VERDICT FORMS

<b>CIVSVF</b>	<b>Page</b>
50.90 Libel—Private Plaintiff and Private Issue—Basic Elements, Presumed Damages, Special Damages and Qualified Privilege .....	516
50.91 Slander—Private Plaintiff and Private Issue—Basic Elements, Presumed Damages, and Special Damages.....	519
50.92 Slander—Special Damages .....	522
50.93 Libel—Public Official or Figure.....	524
50.94 Libel—Public Official or Figure—Qualified Privilege.....	527
50.95 Libel—Matter of Public Concern .....	530
50.96 Libel—Matter of Public Concern—Qualified Privilege .....	533
50.97 Damages.....	536

### CATEGORY 52. EMINENT DOMAIN

<b>CIVJIG</b>	<b>Page</b>
52.10 Eminent Domain—Introductory Statement .....	546
52.15 Taking—Introductory Statement .....	549
52.20 Commissioners' Award.....	552
52.25 View of Premises—Evidence of View.....	554
52.30 Burden of Proof.....	555
52.35 Just Compensation—Total Taking—Definition .....	556
52.40 Fair Market Value .....	557
52.45 Taking of Access Rights .....	560
52.50 Damages for Taking Access Rights.....	562
52.55 Severance Damages—Definition .....	563
52.60 Severance Damages to Noncontiguous Property—Definition .....	564
52.65 Partial Taking—Damages for Part Taken and Severance Damages .....	565
52.70 Partial Taking—Separate Verdicts.....	566
52.75 Leaseholds .....	567
52.80 Benefits of a Ditch to Adjoining Landowners .....	569

### SPECIAL VERDICT FORMS

<b>CIVSVF</b>	<b>Page</b>
---------------	-------------



## TABLE OF CONTENTS

52.90 Severance Damages .....	606
52.91 Non-Contiguous Tracts .....	573
52.92 Owner and Tenant .....	575

### CATEGORY 55. EMPLOYER AND EMPLOYEE

#### PART A. EMPLOYMENT-RELATED TORT CLAIMS

<b>CIVJIG</b>	<b>Page</b>
55.20 Negligent Hiring.....	590
55.25 Negligent Supervision .....	594
55.30 Negligent Retention.....	597
55.31 Employer—Duty to Use Reasonable Care to Provide a Safe Place to Work .....	600
55.32 Employer or Co-Employee Liability—Conscious and Deliberate Intent to Cause Injury .....	602
55.33 Assault Exception .....	604
55.34 Gross Negligence .....	606

#### PART B. CLAIMS ARISING OUT OF THE EMPLOYMENT RELATIONSHIP

<b>CIVJIG</b>	<b>Page</b>
55.35 Employment Contracts—Handbooks or Manuals.....	616
55.40 Employment Contracts—Acceptance .....	619
55.45 Employment Contracts—Consideration.....	620
55.50 Termination for Good Cause .....	621
55.55 Condonation.....	622
55.60 Breach of Employment Contract—Damages .....	624
55.65 Employment Termination in Violation of Public Policy—The Whistleblower Act .....	626
55.66 Good Faith .....	634
55.67 Report .....	638
55.68 Penalize .....	639

#### SPECIAL VERDICT FORMS

<b>CIVSVF</b>	<b>Page</b>
55.90 Employer's Duty to Provide Safe Place to Work .....	640
55.91 Negligent Hiring, Retention, or Supervision .....	642
55.92 Employer or Co-Employee Liability—Conscious and Deliberate Intent to Cause Injury .....	644
55.93 Assault Exception .....	646
55.94 Whistleblower.....	648



## **JURY INSTRUCTION GUIDES—CIVIL**

### **CATEGORY 57. FRAUD AND MISREPRESENTATION**

<b>CIVJIG</b>	<b>Page</b>
57.10 Fraud and Misrepresentation .....	655
57.15 Fraud—Reasonable Reliance .....	661
57.20 Negligent Misrepresentation .....	662
57.25 Fraud and Misrepresentation—Damages .....	667
57.30 Duty to Disclose Material Facts .....	670
57.40 Consumer Fraud .....	672

#### **SPECIAL VERDICT FORMS**

<b>CIVSVF</b>	<b>Page</b>
57.90 Fraud .....	678
57.91 Negligent Misrepresentation .....	681
57.92 Consumer fraud .....	683

### **CATEGORY 59. INSURANCE**

<b>CIVJIG</b>	<b>Page</b>
59.10 Insurance policy coverage burden of proof .....	688
59.15 Insurance policy exclusion burden of proof .....	690
59.20 Exception to insurance policy exclusion burden of proof .....	693
59.25 Misrepresentation—Application for insurance .....	694
59.30 Insurance coverage and exclusion—Intentional injury or harm .....	698
59.35 Good Faith Duty to Settle .....	702
59.40 Insurance Agent and Broker Defined .....	704

#### **SPECIAL VERDICT FORMS**

<b>CIVSVF</b>	<b>Page</b>
59.90 Misrepresentation—Application for insurance .....	707

## **Volume 4A**

### **CATEGORY 60. INTENTIONAL TORTS**

#### **INTENT AND CONSENT**

<b>CIVJIG</b>	<b>Page</b>
60.10 Intentional Torts—Intent—Definition .....	6
60.15 Consent .....	8

#### **ASSAULT AND BATTERY**

<b>CIVJIG</b>	<b>Page</b>
---------------	-------------

## TABLE OF CONTENTS

60.20 Civil Assault—Definition .....	36
60.25 Civil Battery—Definition .....	12

### DEFENSE OF PERSONS AND PROPERTY

<b>CIVJIG</b>	<b>Page</b>
60.30 Self Defense .....	15
60.35 Self Defense—Force Threatening Death or Serious Harm....	18
60.36 Defense of Third Persons .....	20
60.39 Defense of Dwelling .....	22
60.42 Trespass .....	24
60.45 Defense of Property .....	26
60.48 Defense of Third Person's Property .....	28
60.51 Retaking Property by Force .....	29
60.54 Retaking Property by Force—Amount of Force Justified ....	32
60.57 Damages—Excessive Force or Restraint.....	33
60.60 Use of Deadly Force—Peace Officer .....	34
60.63 Reasonable Force .....	36

### CONVERSION

<b>CIVJIG</b>	<b>Page</b>
60.65 Conversion .....	40

### FALSE IMPRISONMENT

<b>CIVJIG</b>	<b>Page</b>
60.70 False Imprisonment—Definition.....	43

### INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

<b>CIVJIG</b>	<b>Page</b>
60.75 Intentional Infliction of Emotional Distress .....	47

### NUISANCE

<b>CIVJIG</b>	<b>Page</b>
60.80 Private Nuisance—Definition .....	53
60.86 Trespass to Land Privilege—Entry to Abate a Private Nuisance .....	57

### SPECIAL VERDICT FORMS

<b>CIVSVF</b>	<b>Page</b>
60.90 Intentional Infliction of Emotional Distress .....	59
60.91 Civil Assault .....	62

## JURY INSTRUCTION GUIDES—CIVIL

<b>CIVSVF</b>	<b>Page</b>
60.92 Battery; Self Defense .....	64
60.93 Conversion .....	66
60.94 False Imprisonment.....	68
60.95 Nuisance.....	70

### CATEGORY 65. MOTOR VEHICLES

<b>CIVJIG</b>	<b>Page</b>
65.10 Negligence—Common Law Duties—Driver—Pedestrian .....	73
65.15 Duty of Motor Vehicle Passenger—General .....	75
65.20 Affirmative Duty of Motor Vehicle Passenger—Limited .....	76
65.25 Violation of Traffic Statute .....	78
65.30 Traffic Statutes—Terms—Definitions .....	81
65.35 Motor Vehicle—Skidding Alone.....	85
65.40 No-Fault Automobile Insurance—Tort Thresholds .....	87

### SPECIAL VERDICT FORMS

<b>CIVSVF</b>	<b>Page</b>
65.90 No-Fault Automobile Insurance .....	91
65.91 Underinsured Motorist Insurance .....	94
65.92 Uninsured Motorist Insurance.....	97

### CATEGORY 70. PARENTS AND CHILDREN

<b>CIVJIG</b>	<b>Page</b>
70.10 Care Required for Safety of Child .....	104
70.15 Reasonable Care—Duty of Child .....	105
70.20 Reasonable Care—Duty of Child—Operation of Automobile, Airplane, or Powerboat.....	107
70.25 Negligence—Parental Liability for Torts of Children— Specific Propensity.....	109
70.30 Negligence—Parental Liability for Torts of Children— Negligent Entrustment.....	111
70.35 Children—Punishment by Teacher or Person Other Than Parent.....	113

### CATEGORY 72. PRIVACY

<b>CIVJIG</b>	<b>Page</b>
72.10 Intrusion Upon Seclusion.....	119
72.15 Appropriation .....	122
72.20 Public Disclosure of Private Facts.....	124
72.25 Invasion of Privacy—Damages.....	127

## TABLE OF CONTENTS

### SPECIAL VERDICT FORMS

<b>CIVSVF</b>	<b>Page</b>
72.90 Invasion of Privacy—Intrusion .....	130
72.91 Invasion of Privacy—Appropriation .....	133
72.92 Invasion of Privacy—Publication of Private Facts.....	135

### CATEGORY 75. PRODUCTS LIABILITY

<b>CIVJIG</b>	<b>Page</b>
75.10 Defendant in Business of Selling or Leasing .....	152
75.15 Defect Must Have Existed When it Left Seller .....	154
75.20 Design Defect .....	155
75.25 The Duty to Warn (Strict Liability and Negligence) .....	168
75.26 Sophisticated Intermediaries.....	176
75.30 Manufacturing Defects.....	184
75.31 Intermediaries Other Than Manufacturers .....	186
75.32 Proof of Defect—Circumstantial Evidence.....	188
75.35 Liability of Manufacturer or Seller of Goods—Negligence....	190
75.40 Manufacturer's Duty to Provide Post-Sale Warnings .....	194
75.45 Bailments .....	200
75.50 Causation.....	203
75.55 Useful Life .....	204
75.60 Food.....	208
75.65 Strict Liability—Avoidance.....	211

### SPECIAL VERDICT FORMS

<b>CIVSVF</b>	<b>Page</b>
75.90 Design Defect and Inadequate Warning Theories (Single plaintiff and Single defendant) .....	214
75.92 Manufacturing Defect Theory (Single plaintiff and Single defendant) .....	217
75.94 Liability Asserted Against Manufacturer and Other Seller Based on Design Defect (Single plaintiff, Multiple defendants) .....	219
75.95 Liability Asserted Only Against Intermediary—Manufacturer Not in Suit (Single plaintiff and Single Intermediary Other Than Manufacturer) .....	223
75.96 Design Defect Asserted Against Manufacturer and Component Parts Manufacturer (Single plaintiff, Product Manufacturer, and Component Parts Manufacturer).....	228
75.98 Liability of Product Manufacturer Based on Design Defect and Inadequate Warnings and plaintiff's Employer (Single plaintiff, Single Manufacturer, and plaintiff's Employer).....	231



## **JURY INSTRUCTION GUIDES—CIVIL**

### **CATEGORY 80. PROFESSIONAL MALPRACTICE**

#### **MEDICAL PROFESSIONALS AND HOSPITALS**

<b>CIVJIG</b>	<b>Page</b>
80.10 Duty of a Doctor, Dentist, or Healthcare Provider .....	257
80.11 Loss of a Chance of (Survival) (More Favorable Outcome) ...	262
80.16 Departure from Manufacturer's Instructions.....	264
80.19 Duty of Doctor to Refer .....	266
80.22 Consent to Treatment-Operation .....	268
80.25 Informed Consent (Negligent Nondisclosure) .....	271
80.28 Patient's Duty to Follow Instructions.....	278
80.31 Duty of Nurse.....	279
80.37 Duty of Hospital.....	281
80.40 Liability of Hospital Following Doctor's Orders.....	284
80.43 Liability of Hospital for Negligence of Physician or Nurse ...	285
80.46 Liability of Hospital for Damage or Injury to Third Person by Patient.....	286

#### **ATTORNEYS**

<b>CIVJIG</b>	<b>Page</b>
80.55 Duty of an Attorney.....	287
80.58 Duty of an Attorney-Specialist.....	289
80.61 Attorney-Client Relationship—Contract .....	290
80.64 Attorney-Client Relationship—No Express or Implied Contract.....	292
80.66 Legal Malpractice—Causation .....	294

#### **OTHER PROFESSIONALS**

<b>CIVJIG</b>	<b>Page</b>
80.75 Duty of Public Accountant, Architect, Engineer, and Other Professional.....	296

#### **SPECIAL VERDICT FORMS**

<b>CIVSVF</b>	<b>Page</b>
80.90 Medical Malpractice.....	300
80.92 Medical Malpractice—Informed Consent .....	301
80.93 Loss of a Chance of a More Favorable Outcome .....	303
80.94 Loss of a Chance of a More Favorable Outcome as an Alternative Theory.....	305
80.95 Wrongful Death—Loss of a Chance .....	308
80.96 Wrongful Death—Loss of a Chance as an Alternative Theory.....	310

## TABLE OF CONTENTS

<b>CIVSVF</b>	<b>Page</b>
80.97 Legal Malpractice—Case-In-A-Case.....	312
80.98 Legal Malpractice—Transactional.....	313

### CATEGORY 85. PROPERTY

#### TRESPASSERS AND ENTRANTS

<b>CIVJIG</b>	<b>Page</b>
85.10 Trespasser—Definition.....	326
85.13 Duty of Possessor to Trespasser—Injury Caused by Condition of the Premises.....	328
85.16 Duty of Possessor to Trespasser—Injury Caused by Owner's or Occupant's Activities .....	331
85.19 Injury to Trespassing Children—"Attractive Nuisance" .....	333
85.22 Definition of Entrant.....	337
85.25 Duty of Possessor and Entrant .....	339
85.31 Recreational Use .....	345

#### LANDLORD AND TENANT

<b>CIVJIG</b>	<b>Page</b>
85.40 Leased Premises—Latent Defect—Duty of Landlord.....	350
85.43 Leased Premises—Areas Controlled by Landlord.....	353
85.46 Leased Premises—Negligent Breach of Covenant to Repair .	356
85.49 Leased Premises—Negligent Repair .....	359
85.50 Leased Premises-Uniform Building Code Violation .....	360
85.52 Leased Premises—Public Use.....	362
85.55 Abnormally Dangerous Activities.....	364

#### SIDEWALKS AND STREETS

<b>CIVJIG</b>	<b>Page</b>
85.60 Duty of Owner of Property Abutting Sidewalk .....	366
85.63 Sidewalks and Streets—Duty of Municipality .....	370
85.65 Municipality—Defective Streets or Sidewalks—Actual Knowledge or Constructive Notice .....	373

#### DUTIES OF OTHER PROPERTY OWNERS

<b>CIVJIG</b>	<b>Page</b>
85.70 Innkeeper's Duty .....	375
85.75 Duty of Parking Ramp Operator .....	378
85.80 Adverse Possession.....	380
85.82 Slander of Title .....	386

## **JURY INSTRUCTION GUIDES—CIVIL**

### **PART IV DAMAGES**

#### **CATEGORY 90. DAMAGES**

<b>CIVJIG</b>	<b>Page</b>
90.10 Compensatory Damages—Personal and Property Damages—Definition .....	397
90.15 Damages—Burden of Proof.....	399
90.20 Compensatory Damages—Personal and Property Damages—General Instruction.....	400
90.25 Adjustment of Future Damages—Present Cash Value.....	405
90.30 Taxation of Damages.....	408

#### **CATEGORY 91. PERSONAL DAMAGE**

<b>CIVJIG</b>	<b>Page</b>
91.10 Items of Personal Damage—Past Damages—Bodily and Mental Harm.....	410
91.15 Items of Personal Damage—Past Damages—Medical Supplies, Hospital and Medical Expense.....	413
91.20 Items of Personal Damage—Past Damages—Loss of Earnings .....	415
91.25 Items of Personal Damage—Future Damages—Bodily Harm and Mental Harm .....	416
91.30 Items of Personal Damage—Future Damages—Medical Supplies, Hospital and Medical Expense.....	418
91.35 Items of Personal Damage—Future Damages—Loss of Earning Capacity .....	419
91.40 Items of Personal Damage—Pre-Existing Condition—Aggravation.....	421
91.41 Items of Personal Damage—Pre-Existing Condition— Eggshell plaintiff Doctrine .....	424
91.45 Mitigation of Damages—Person .....	426
91.47 Mitigation of Damages—Loss of Earnings.....	428
91.50 Items of Personal Damage—Spouse's Damages for Injury to Spouse.....	430
91.55 Items of Personal Damage—Parent's Damages for Injury to Child .....	432
91.60 Items of Personal Damage—Child's Action—Loss of Future Earning Capacity .....	435
91.65 Items of Personal Damage—Child's Action—Future Medical Supplies, Hospital and Medical Expense.....	437
91.70 Emancipation of a Minor .....	439
91.75 Measure of Damages—Wrongful Death.....	440
91.80 Wrongful Death—Negligence of plaintiff's Decedent or of One of Several Beneficiaries.....	446

**TABLE OF CONTENTS**

<b>CIVJIG</b>	<b>Page</b>
91.85 Life Expectancy Tables .....	447

**CATEGORY 92. PROPERTY DAMAGE**

<b>CIVJIG</b>	<b>Page</b>
92.10 Damage to Property—Elements .....	451
92.15 Mitigation of Damages—Property .....	457

**CATEGORY 94. PUNITIVE DAMAGES**

<b>CIVJIG</b>	<b>Page</b>
94.10 Punitive Damages .....	464
94.15 Liability for Punitive Damages—Employer-Principal .....	471

**SPECIAL VERDICT FORMS**

<b>CIVSVF</b>	<b>Page</b>
94.90 Punitive Damages .....	473
94.92 Punitive Damages—Agent and Principal .....	474
Mortality Tables .....	477

**Table of Laws and Rules**

**Table of Cases**

**Index**







# PART III

## TOPICAL AREAS OF LAW

---

### *Table of Categories*

Category 60    Intentional Torts  
Intent and Consent  
Assault and Battery  
Defense of Persons and Property  
Conversion  
False Imprisonment  
Intentional Infliction of Emotional Distress  
Nuisance  
Special Verdict Forms  
Category 65    Motor Vehicles  
Special Verdict Forms  
Category 70    Parents and Children  
Category 72    Privacy  
Special Verdict Forms  
Category 75    Products Liability  
Special Verdict Forms  
Category 80    Professional Malpractice  
Medical Professionals and Hospitals  
Attorneys  
Other Professionals  
Special Verdict Forms  
Category 85    Property  
Trespassers and Entrants  
Landlord and Tenant  
Sidewalks and Streets  
Duties of Other Property Owners



## CATEGORY 60

### INTENTIONAL TORTS

---

#### *Table of Instructions*

#### INTENT AND CONSENT

- CIVJIG 60.10 Intentional Torts—Intent—Definition  
CIVJIG 60.15 Consent

#### ASSAULT AND BATTERY

- CIVJIG 60.20 Civil Assault—Definition  
CIVJIG 60.25 Civil Battery—Definition

#### DEFENSE OF PERSONS AND PROPERTY

- CIVJIG 60.30 Self Defense  
CIVJIG 60.35 Self Defense—Force Threatening Death or  
Serious Harm  
CIVJIG 60.36 Defense of Third Persons  
CIVJIG 60.39 Defense of Dwelling  
CIVJIG 60.42 Trespass  
CIVJIG 60.45 Defense of Property  
CIVJIG 60.48 Defense of Third Person's Property  
CIVJIG 60.51 Retaking Property by Force  
CIVJIG 60.54 Retaking Property by Force—Amount of Force  
Justified  
CIVJIG 60.57 Damages—Excessive Force or Restraint  
CIVJIG 60.60 Use of Deadly Force—Peace Officer  
CIVJIG 60.63 Reasonable Force

#### CONVERSION

- CIVJIG 60.65 Conversion

#### FALSE IMPRISONMENT

- CIVJIG 60.70 False Imprisonment—Definition

## INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

CIVJIG 60.75 Intentional Infliction of Emotional Distress

## NUISANCE

CIVJIG 60.80 Private Nuisance—Definition

CIVJIG 60.86 Trespass to Land Privilege—Entry to Abate a Private Nuisance

## SPECIAL VERDICT FORMS

CIVSVF 60.90 Intentional Infliction of Emotional Distress

CIVSVF 60.91 Civil Assault

CIVSVF 60.92 Battery; Self Defense

CIVSVF 60.93 Conversion

CIVSVF 60.94 False Imprisonment

CIVSVF 60.95 Nuisance

---

INTRODUCTORY NOTE

This section includes jury instructions on a variety of intentional torts and the defenses to those torts. It includes instructions on the torts of assault, battery, false imprisonment, and intentional infliction of emotional distress. It also includes instructions on trespass to real property and conversion.

*Intentional Torts*

Aside from the tort of conversion, the tort of intentional infliction of emotional distress is the only tort that specifically requires proof of actual harm to justify recovery. Restatement (Second) of Torts § 46 (1965). It requires proof that the plaintiff suffer severe emotional distress, defined as emotional distress so severe that no reasonable person could be expected to endure it. The courts have imposed rigid requirements on the tort, making it difficult to recover for intentional infliction of emotional distress. Most cases are disposed of on summary judgment. However, if the plaintiff proves any of the other intentional torts, he or she is entitled to recover for any emotional harm flowing from the tort, without meeting the elements of the tort of intentional infliction of emotional distress.

The intent standard (CIVJIG 60.10) is a constant for the intentional torts. Intent requires a showing that a person wanted to cause the consequences of his or her acts, or knew that his or her acts were substantially certain to cause those consequences.

*Defenses*

There are also several specified defenses to the intentional tort



claims, as well as defenses that provide a possessor of land with defenses where force is used to eject an entrant on the possessor's land. The right to use force in cases involving self defense is subject to a reasonableness requirement. Deadly force is justified only where deadly force is threatened. In all cases, the person who uses force must have a reasonable belief that force is necessary under the circumstances.

A person has a right to use force, including deadly force, to prevent the commission of a felony in one's place of abode. The defense is somewhat broader than the right of self defense, but it is still subject to reasonableness requirements. The usual duty to retreat in self defense cases is inapplicable when one is in one's dwelling place.

## INTENT AND CONSENT

## CIVJIG 60.10

## INTENTIONAL TORTS—INTENT—DEFINITION

## Definition of intent or intentionally

“Intent” or “intentionally” means that a person:

1. Wants to cause the consequences of his or her acts, or
2. Knows that his or her acts are substantially certain to cause those consequences.

---

USE NOTE

This instruction provides the standard for deciding intent issues in cases involving intentional torts. It is applicable to all claims involving intentional torts. Absent the application of the doctrine of transferred intent, the intent instruction should be tied to the elements of the specific torts in issue. In a battery case, for example, the person charged with battery must intend a harmful or offensive contact with another person. That means the defendant must be shown to have wanted to cause a harmful or offensive contact, or knew that a harmful or offensive contact was substantially certain to occur as a result of his or her acts.

## AUTHORITIES

In *Victor v. Sell*, 301 Minn. 309, 314, 222 N.W.2d 337, 340 (1974), the supreme court indicated approval of a definition of “intent” taken from the Restatement (Second) of Torts § 8A (1965). That section reads as follows:

The word “intent” is used throughout the Restatement of this Subject to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it.

The courts have continued to adhere to the Restatement standard. *E.g.*, *R.W. v. T.F.*, 528 N.W.2d 869, 872 (Minn. 1995) (construing intentional act exclusion in homeowner’s policy, and inferring intent as a matter of law, where harm is substantially certain to result, even if no actual desire or intent to transmit herpes); *Kaluza v. Home Ins. Co.*,

403 N.W.2d 230, 233 (Minn. 1987) (issue of whether insurer intentionally obstructed employee who sought workers' compensation benefits); *German Mut. Ins. Co. v. Yeager*, 554 N.W.2d 116, 117 (Minn. Ct. App. 1996), rev. denied (Minn. Dec. 23, 1996) ("[w]hen the nature and circumstances of the insured's act are such that harm is substantially certain to result, intent to harm is inferred as a matter of law"); *Plath v. Plath*, 402 N.W.2d 577, 579 (Minn. Ct. App. 1987) (defining intent element of battery), rev'd on other grounds, 428 N.W.2d 392 (Minn. 1988).

#### Research References

*West's Key Number Digest*

Torts ☞ 115, 149

## CIVJIG 60.15

## CONSENT

## Definition of "consent"

"Consent" means an apparent willingness that (identify the tort) take place.

---

USE NOTE

This instruction defines consent. It should be tailored to the individual case, given the variety of interests that may be involved. The instruction might state in a battery case, for example, that consent to a battery means that the plaintiff permitted the battery to take place. If there is an issue as to whether consent has been voided, the jury should be instructed accordingly. For example, if consent is coerced or fraudulently induced, the instruction should take those factors into consideration in the instruction.

## AUTHORITIES

Consent is a defense to the commission of an intentional tort. *See Peterson v. Sorlien*, 299 N.W.2d 123, 128 (Minn. 1980), cert. denied, 450 U.S. 1031, 101 S.Ct. 1742, 68 L.Ed.2d 227 (1981) (false imprisonment). Restatement (Second) of Torts § 10A (1965), states that "[t]he word 'consent' is used throughout the Restatement of this Subject to denote willingness in fact that an act or an invasion of an interest shall take place."

Consent may be vitiated by incapacity, coercion, mistake, or fraud. *K.A.C. v. Benson*, 527 N.W.2d 553, 564 (Minn. 1995) (Page, J., dissenting) (citing W. Page Keeton, et al., *Prosser and Keeton on Torts* § 18, at 114 (5th ed. 1984)).

## Research References

*West's Key Number Digest*  
*Torts* ⇨126, 149



## ASSAULT AND BATTERY

## CIVJIG 60.20

## CIVIL ASSAULT—DEFINITION

**Proof of an assault**

An assault occurred if:

1. (Defendant) acted with the intent to cause apprehension or fear of immediate (harm to) (offensive contact with) (plaintiff), and
2. (Defendant) had the apparent ability to cause the (harm) (offensive contact), and
3. (Plaintiff) had a reasonable apprehension or fear that the immediate (harm) (offensive contact) would occur.

---

**USE NOTE**

This instruction is intended for use in cases involving civil assault.

**AUTHORITIES**

The intentional tort of assault protects a person's interest in freedom from apprehension of a harmful or offensive contact, as distinguished from the contact itself. Dan B. Dobbs et al., *The Law of Torts* 2d §§ 38–40 (2011).

The Minnesota Supreme Court summarized civil assault in *Dahlin v. Fraser*, 206 Minn. 476, 478, 288 N.W. 851, 852 (1939):

An assault is an unlawful threat to do bodily harm to another with present ability to carry the threat into effect. Mere words or threats alone do not constitute assault. When the words or threats are accompanied by a threat of physical violence under conditions indicating present ability to carry out the threat, they cease to be mere words or threats. (Citing *Johnson v. Sampson*, 167 Minn. 203, 208 N.W. 814, 46 A.L.R. 772.) The display of force must be such as to cause plaintiff reasonable apprehension of immediate bodily harm. Evidence that the party charged exhibited anger, used violent language and threatened to strike another while in his presence

under circumstances indicating a present ability to carry out the threats is sufficient to show an assault. (Citing *Mitchell v. Mitchell*, 45 Minn. 50, 47 N.W. 308; *Plonty v. Murphy*, 82 Minn. 268, 84 N.W. 1005.)

It is clear that a threat by words alone, no matter how abusive, does not constitute an assault. See *Johnson v. Sampson*, 167 Minn. 203, 205, 208 N.W. 814, 815 (1926); *Bucknam v. Great Northern Ry. Co.*, 76 Minn. 373, 376, 79 N.W. 98, 98 (1899). Assault also requires a showing that the defendant has the apparent present ability to carry out the assault. *Johnson v. Morris*, 453 N.W.2d 31, 41 (Minn. 1990); *Elwood v. County of Rice*, 423 N.W.2d 671, 679 (Minn. 1988).

Assault requires intent. Since the protection goes to the freedom from apprehension of physical contact, it is sufficient that the actor's intent is to arouse such apprehension, even though the actor does not intend to inflict the physical contact. It has been made clear that "intent may be inferred from all the facts and circumstances, such as exhibitions of anger, threats, gestures and other conduct." *Dahlin v. Fraser*, 206 Minn. 476, 478, 288 N.W. 851, 853 (1939).

There is no requirement that the plaintiff's apprehension arise by the threat that the defendant will personally inflict the contact. It is sufficient if the plaintiff's apprehension is aroused by the threat that a physical contact will be imminently inflicted by a third person or another force. See *Lambrecht v. Schreyer*, 129 Minn. 271, 152 N.W. 645 (1915).

Restatement (Second) of Torts § 31 (1965), permits a finding of assault on the basis of words in the light of past conduct and other attendant circumstances. Section 31 provides that "[w]ords do not make the actor liable for assault unless together with other acts or circumstances they put the other in reasonable apprehension of an imminent harmful or offensive contact with his person." Such "other acts or circumstances" might, for example, be reaching for a gun.

A *conditional* threat results in liability, unless the actor is privileged to do the act threatened. The Restatement (Second) of Torts § 30 (1965) states that "[i]f the actor intentionally puts another in apprehension of an immediate and harmful or offensive contact, he is subject to liability for an assault although he gives to the other the option to escape by obedience to a command given by the actor, unless the command is one which the actor is privileged to enforce by the infliction of the threatened contact or by a threat to inflict it."

Restatement (Second) of Torts § 22 (1965) states that "[a]n attempt to inflict a harmful or offensive contact or to cause an apprehension of such contact does not make the actor liable for an assault if the other does not become aware of the attempt before it is terminated."

#### Research References

*West's Key Number Digest*  
Assault and Battery ☞1, 43(1)

*Legal Encyclopedias*

C.J.S., Assault §§ 1 to 14, 21, 28, 61 to 63

## CIVJIG 60.25

## CIVIL BATTERY—DEFINITION

## Proof of battery

A battery occurred if it is proved that (defendant) intentionally caused harmful or offensive contact with (plaintiff) (or anything worn or held by or closely connected to (plaintiff)).

[It was still a battery, if (defendant) did not intend to make contact with (plaintiff), but did intend to make contact with someone or something else.]

[The contact may be caused directly or indirectly.]

---

USE NOTE

This instruction is intended for use in battery actions. Battery may occur directly or indirectly, and the contact may be with the plaintiff or something closely appurtenant to the plaintiff.

## AUTHORITIES

The supreme court has defined battery “as an intentional unpermitted offensive contact with another.” *Paradise v. City of Minneapolis*, 297 N.W.2d 152, 155 (Minn. 1980). In *K.A.C. v. Benson*, 527 N.W.2d 553, 561 (1995), the supreme court noted that battery in a medical malpractice context “consists of touching of a substantially different nature and character from that to which the patient consented.” See also *Kinikin v. Heupel*, 305 N.W.2d 589, 593 (Minn. 1981) (“where the focus is more on the extent of the surgery performed and the attendant risks rather than on the kind of surgery, it would seem preferable to submit only negligent nondisclosure”); *Mohr v. Williams*, 95 Minn. 261, 271, 104 N.W. 12, 16 (1905) (Plaintiff consented to ear operation but surgeon, finding the other ear diseased, operated on that ear.). For jury instructions on consent to medical treatment, see CIVJIG 80.22 and 80.25.

It also seems fairly clear, at least by implication, that a battery will exist if the unauthorized contact is made upon something closely appurtenant to the plaintiff, such as the plaintiff’s clothing. In *Smith v. Hubbard*, 253 Minn. 215, 225, 91 N.W.2d 756, 764 (1958), the evidence showed that the defendant, when the plaintiff as village constable attempted to arrest him for a traffic offense, had pushed the plaintiff, torn his shirt, and broken his badge. The court held that this “was sufficient physical contact to constitute a battery,” and concluded that compensa-



tory damages could include an award for humiliation and mental suffering. *See also* Dan B. Dobbs et al., *The Law of Torts* 2d § 47 (2011).

There is good reason to believe that the law in Minnesota extends this protection to the integrity of the person beyond clothing and objects immediately attached. In *Lambrecht v. Schreyer*, 129 Minn. 271, 152 N.W. 645 (1915), the defendant became angry, lashed his horses, and passed plaintiff's surrey shouting violently. As defendant did so, he struck one of plaintiff's horses with a whip, and the horse went out of control, overturning the surrey and injuring plaintiff. The trial court had instructed the jury that if defendant had struck one of plaintiff's horses maliciously, wantonly, or recklessly, or if defendant had passed so closely as to injure plaintiff, even though he did not strike plaintiff's horse, and had done so recklessly, and either of such acts caused plaintiff's injury, then this was an "assault," the court apparently meaning a "battery." In affirming, the court held that both of these acts would have constituted an assault, and the lower court's instruction was proper. Although the injury to the plaintiff was not directly inflicted, such indirect batteries are covered by the Restatement (Second) of Torts § 13 (1965), which provides that a battery exists when "a harmful contact with the person of the other directly or indirectly results." *See also* Dan B. Dobbs et al., *The Law of Torts* 2d § 47 (2011).

In *Corn v. Sheppard*, 179 Minn. 490, 229 N.W. 869 (1930), defendant, in pursuit of a dog that had been harassing his hogs, fired into the night and struck the plaintiff's 15 year old son. The court noted that the defendant's attempt to shoot the dog, not being done to "save persons, domestic animals, or poultry from injury," was an unlawful act. The court also noted that firearms are generally dangerous instrumentalities, and when the possessor injures another by the discharge of a firearm, he then has the burden of establishing his freedom from negligence. The court held:

Where a person intentionally discharges a firearm for a wrongful purpose and another is hit, he is liable for the injuries inflicted although he did not intend to hit the other nor even know that any person was within range.

179 Minn. at 493, 229 N.W. at 871.

*Corn v. Sheppard* fits within the doctrine of transferred intent, where the defendant intends one intentional tort, in this case trespass to chattels, and commits another, battery. *See* Dan B. Dobbs et al., *The Law of Torts* 2d § 45 (2011).

Although a police officer may use reasonable force in making an arrest, a battery may arise where the officer uses excessive force. *See Paradise v. Minneapolis*, 297 N.W.2d 152, 155 (Minn. 1980); *Johnson v. Peterson*, 358 N.W.2d 484 (Minn. Ct. App. 1984).

Once the plaintiff proves a battery, the plaintiff is entitled to re-

cover damages for humiliation and mental suffering, even though the elements of intentional infliction of emotional distress have not been met. *Johnson v. Ramsey County*, 424 N.W.2d 800, 804 (Minn. Ct. App. 1988).

**Research References**

*West's Key Number Digest*

Assault and Battery ☞1, 43(1)

*Legal Encyclopedias*

C.J.S., Assault §§ 1 to 14, 21, 28, 61 to 63

**DEFENSE OF PERSONS AND PROPERTY****CIVJIG 60.30****SELF DEFENSE****Right to self-defense**

A person has a right to use reasonable force to protect himself or herself, or his or her property.

This right exists if a reasonable person under the circumstances would believe this action is necessary.

A person may not use more force than a reasonable person would use under the circumstances.

---

**USE NOTE**

This instruction is intended for use in cases where the defense of self defense is in issue. The accompanying special verdict question should ask whether the defendant used reasonable force in defending himself or herself under the circumstances.

**AUTHORITIES**

Generally, it may be stated that a privilege arises by operation of law, irrespective of the other's consent, for the purpose of enabling an actor to protect himself or herself or a third person against tortious invasions of person or property.

M.S.A. § 609.06, subd. 1 provides that:

[R]easonable force may be used upon or toward the person of another without his consent when the following circumstances exist or the actor reasonably believes them to exist: \* \* \*

(3) When used by any person in resisting or aiding another to resist an offense against the person; or

(4) When used by any person in lawful possession of real or personal property, or by another assisting the person in lawful possession, in resisting a trespass upon or other unlawful interference with such property; \* \* \* .

Stated another way, an act otherwise criminal or tortious is justifi-



able when done to protect the actor or another whom he is bound to protect from imminent personal injury, whenever such act appears to be only what is reasonably necessary to prevent the injury, and such an act is likewise justifiable when the threatened injury is a trespass or other unlawful interference with real or personal property lawfully in the possession of the actor.

The privilege of self-defense is limited to the use of force that is, or reasonably appears to be, necessary for protection against the threatened injury—the use of excessive force is a tort. *See Symalla v. Dusenka*, 206 Minn. 280, 281–82, 288 N.W. 385, 385–86 (1939); *See also* Dan B. Dobbs et al., *The Law of Torts* 2d § 80 (2011). It is not required that the necessity of using force in self-defense be real—an apparent need to use force suffices. *See State v. Bland*, 337 N.W.2d 378, 381 (Minn. 1983); *Germolus v. Sausser*, 83 Minn. 141, 144, 85 N.W. 946, 947 (1901).

Finally, the actor must believe that the means that he applies are necessary to prevent the apprehended harm and not merely that they are likely to be *effective* in preventing it. This belief of the actor must be reasonable. Whether a means of self-defense is excessive depends upon the bodily harm or confinement the actor intends to cause, or the harm he has reason to believe is likely to result. Means are excessive if the actor should realize they are likely to do more harm or impose a greater confinement than he intends or is privileged to inflict; but they do not become excessive because they unforeseeably result in such harm.

The Minnesota Supreme Court in *Dyson v. Schmidt*, 260 Minn. 129, 138, 109 N.W.2d 262, 268 (1961) held:

It is our opinion that it was a question for the jury whether the officers should have approached the suspect in the theater lobby under the particular facts and circumstances here. There appears to have been ample time, between their first discussion as to strategy and the intermission, to summon additional help, which was not done. They had information that the suspect was dangerous and likely to be armed and to resist arrest by force of arms if necessary.

The court also stated:

[T]he general rule seems to be that a police officer is personally liable for negligent or wrongful acts causing personal injury or death  
\* \* \*

[T]he rule should be that an officer, confronted with a sudden emergency, where it appears that a person is committing a felony or is threatening or endangering the life of the officer or others, should not be held liable for negligence in the event a bullet goes astray and hits a bystander. However, this rule should not prevail under



circumstances, such as here, where a jury question existed as to whether the conduct of the officers created a situation which brought about the emergency.

M.S.A. § 609.066, subd. 3, provides that “[t]his section and [the statutory sections authorizing the use of deadly force] may not be used as a defense in a civil action brought by an innocent third party.”

#### **Research References**

*West's Key Number Digest*  
Assault and Battery ⇨13, 43(2)

*Legal Encyclopedias*  
C.J.S., Assault §§ 25 to 28, 61 to 63

## CIVJIG 60.35

**SELF DEFENSE—FORCE THREATENING DEATH  
OR SERIOUS HARM****Right to use deadly force**

A person has the right to use force that involves risk of serious injury or death if at the time he or she (injured) (killed) (victim) (defendant):

1. He or she reasonably believes that he or she is resisting or preventing an offense, that
2. Exposes him or her to danger of death or serious harm.

---

**USE NOTE**

This instruction is intended for use in cases where the defendant, or plaintiff, as the case may be, uses deadly force. The immediately preceding instruction (CIVJIG 60.30) should be used in cases where force other than deadly force is used in self defense.

**AUTHORITIES**

In *State v. Radke*, 821 N.W.2d 316 (Minn. 2012), the supreme court stated that there are four elements to a valid self-defense claim:

(1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he was in imminent danger of death or great bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger.

*Id.* at 324, citing *State v. Johnson*, 719 N.W.2d 619, 629 (Minn.2006).

There are two chief prerequisites to the existence of the privilege of using force threatening death or serious harm: (1) the actor must reasonably believe that the other is about to inflict upon him an intentional contact or other bodily harm, and (2) the actor must reasonably believe that he is thereby put in peril of death or serious bodily harm, which can be prevented only by the use of such force. *Dan B. Dobbs et al., The Law of Torts* 2d § 80 (2011).

While there is a duty to retreat or avoid the danger if reasonably

possible, see *State v. Penkaty*, 708 N.W.2d 185, 207 (Minn. 2006); *State v. Bland*, 337 N.W.2d 378, 384 (Minn. 1983), there is no duty to retreat in defense of one's dwelling, *State v. Carothers*, 594 N.W.2d 897, 900 (Minn. 1999), nor is there a duty to retreat before using self defense in one's dwelling. *State v. Glowacki*, 630 N.W.2d 392, 399 (Minn. 2001).

**Research References**

*West's Key Number Digest*

Assault and Battery ⇨13, 43(2)

*Legal Encyclopedias*

C.J.S., Assault §§ 25 to 28, 61 to 63

**CIVJIG 60.36****DEFENSE OF THIRD PERSONS****Defending a third person**

A person has a right to use reasonable force to protect another from attack when he or she has a reasonable belief that it is necessary.

The person may not use more force than a reasonable person would have used in similar circumstances.

---

**USE NOTE**

This instruction is intended for use in cases where a person uses force to defend a third person from an attack. The appropriate special verdict question should ask two questions. The first is whether the person exercising force had a reasonable belief that it was necessary. The second question is whether the force used was the force a reasonable person would have used under the circumstances.

**AUTHORITIES**

The rule in criminal cases brought for defense of third persons is stated in M.S.A. §§ 609.06 and 609.065. Section 609.06, subd. 1 (3) provides that:

[R]easonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist: \* \* \*

(3) when used by any person in resisting or aiding another to resist an offense against the person; \* \* \* .

Section 609.065 establishes conditions for the justifiable taking of life:

The intentional taking of life of another is not authorized by section 609.06, except when necessary in resisting or preventing an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death, or preventing the commission of a felony in the actor's place of abode.

The analysis of the privilege to defend third persons follows the right of self defense. The intervenor must have a reasonable belief that



the victim would have a right of self defense, and the force used must be reasonable under the circumstances. While the statutory standard is intended for use in criminal cases, they reflect a policy that would presumably carry over into civil cases. Dan B. Dobbs et al., *The Law of Torts* 2d § 84 (2011).

**Research References**

*West's Key Number Digest*  
Assault and Battery Ⓒ14, 43(2)

*Legal Encyclopedias*  
C.J.S., Assault §§ 29 to 30, 61 to 63

## CIVJIG 60.39

## DEFENSE OF DWELLING

## Right to defend a residence

A person has the right to use force, even if it involves a risk of serious physical injury or death, in preventing a felony in his or her (residence) (home), if:

1. He or she reasonably believes a felony is being committed, and
2. The force used is reasonable under the circumstances.

---

USE NOTE

The law permits the use of deadly force in defense of one's dwelling place. This instruction should be used in cases where that defense is in issue. It is important to understand that the right to use deadly force in defense of one's dwelling place is not dependent on a person's belief that his or her life is in danger. Rather, it is based on the reasonable belief that a felony is being committed in one's dwelling place.

## AUTHORITIES

In *State v. Pendleton*, 567 N.W.2d 265, 270 (Minn. 1997), the court held that three questions have to be answered affirmatively in order for the defense of dwelling place to be established:

(1) At the time the defendant used deadly force against the victim, was the defendant preventing the commission of a felony in his or her home?

(2) Was the belief reasonable under the circumstances?

(3) Was the use of deadly force reasonable under the circumstances in light of the danger then to be apprehended?

A defendant who asserts the defense of dwelling is not required to show that he or she feared great bodily harm or death in preventing the commission of the felony in his or her home. 567 N.W.2d at 271.

It is reasonable for a person to use force involving a risk of serious bodily injury or death in preventing the commission of a felony in his or

her home if (he) (she) reasonably believed that a felony was being committed there, and the use of that force was reasonable under the circumstances.

There is no duty to retreat in one's own dwelling before deadly force may be used. *State v. Carothers*, 594 N.W.2d 897, 903-04 (Minn. 1999).

**Research References**

*West's Key Number Digest*

Assault and Battery Ⓒ15, 43(2)

*Legal Encyclopedias*

C.J.S., Assault §§ 31 to 33, 61 to 63

## CIVJIG 60.42

## TRESPASS

## Definition of "trespass"

"Trespass" occurs when a person intentionally:

1. [Goes on land belonging to another person] [or causes some object or third person to go on land],  
or
2. [Stays on land after he or she is supposed to leave], or
3. [Does not remove something on the land that he or she has a duty to remove].

---

USE NOTE

This instruction is intended for use in cases where there is a trespass on land. The trespass may occur when a person enters the property of another without permission, or initially enters with permission but stays beyond the time allowed or deviates from the scope of permission.

## AUTHORITIES

Restatement (Second) of Torts § 158 (1965), reads as follows:

One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally

(a) enters land in the possession of the other, or causes a thing or a third person to do so, or

(b) remains on the land, or

(c) fails to remove from the land a thing which he is under a duty to remove.

*See Victor v. Sell*, 301 Minn. 309, 222 N.W.2d 337 (1974).

There are also statutory actions for trespass. *E.g.*, M.S.A. § 561.09 (owner of animals liable for treble damages for trespass); M.S.A.



§ 561.04 (cutting down trees, etc.). In *Pluntz v. Farmington Ford-Mercury, Inc.*, 470 N.W.2d 709, 711 (Minn. Ct. App. 1991), rev. denied (Minn. July 24, 1991), the court said that intentional entry on land is not necessary in the statutory action.

### Research References

#### *West's Key Number Digest*

Assault and Battery ⚡15, 43(2); Trespass ⚡9

#### *Legal Encyclopedias*

C.J.S., Assault §§ 31 to 33, 61 to 63; Trespass §§ 12 to 16, 28 to 29, 74

**CIVJIG 60.45****DEFENSE OF PROPERTY****Right to defend one's property**

A person has the right to defend his or her (home) (land) (personal property) from loss or damage caused by (another person) (another person's property).

He or she must reasonably believe that the intrusion can only be stopped by using force. He or she may not use more force than a reasonable person would use in similar circumstances.

---

**USE NOTE**

This instruction is intended for use in cases where the defendant uses force to defend property from loss or damage caused by another party. The special verdict questions should track the two primary elements of the defense.

**AUTHORITIES**

The general rule is set forth in the Restatement (Second) of Torts § 77 (1965):

An actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to prevent or terminate another's intrusion upon the actor's land or chattels, if

(a) the intrusion is not privileged or the other intentionally or negligently causes the actor to believe that it is not privileged, and

(b) the actor reasonably believes that the intrusion can be prevented or terminated only by the force used, and

(c) the actor has first requested the other to desist and the other has disregarded the request, or the actor reasonably believes that a request will be useless or that substantial harm will be done before it can be made.

An actor may use force that threatens death or serious bodily harm, however, only if he reasonably believes that the intruder, unless expelled or excluded, is likely to cause death or serious bodily harm to

the actor or to a third person whom the actor is privileged to protect. *See* Restatement (Second) of Torts § 79 (1965). The actor may not use any means of defending his property likely to cause harm in excess of what would be reasonably necessary to prevent or terminate the intrusion, but the actor may threaten and put the intruder in apprehension of use of such excessive force. *See* Restatement (Second) of Torts § 81.

In *Kobbe v. Chicago & North Western Ry. Co.*, 173 Minn. 79, 82, 216 N.W. 543, 545 (1927), the supreme court said, "although owing him no duty as a trespasser, defendant nevertheless must refrain from wantonly injuring him in ejecting him from the car and from ejecting him, or forcing him to jump from the car when it was going so rapidly as to endanger his life or person."

#### Research References

*West's Key Number Digest*

Assault and Battery ⇨15, 43(2)

*Legal Encyclopedias*

C.J.S., Assault §§ 31 to 33, 61 to 63

## CIVJIG 60.48

## DEFENSE OF THIRD PERSON'S PROPERTY

## Right to defend property of another

A person has the right to defend (land) (personal property) of a third person from loss or damage caused by (another person) (another person's property).

He or she must reasonably believe that the intrusion can only be stopped by using force. He or she may not use more force than a reasonable person would use in similar circumstances.

---

USE NOTE

This instruction is intended for use in cases where force is used to defend the property of a third person.

## AUTHORITIES

Early cases held that the right of self-defense against intrusion extended to the defense of property of members of one's own household or relatives, or the right of servants to protect their employer's property. *See Higgins v. Minaghan*, 47 N.W. 941, 943 (Wis. 1891). The Restatement (Second) of Torts § 86 (1965), includes both family and household members and persons to whom the actor owes a legal duty of protection. The question of defense of another's property involves the same considerations as the question of self-defense. The proposed instruction has no limitation on the relationship of the actor to the party whose property interests are being protected. The approach is impliedly adopted in M.S.A. § 609.06, subd. 1 (4), which provides that reasonable force may be used by "any person in lawful possession of real or personal property, or by another assisting the person in lawful possession, in resisting a trespass upon or other unlawful interference with such property."

## Research References

*West's Key Number Digest*  
Assault and Battery Ⓒ15, 43(2)

*Legal Encyclopedias*  
C.J.S., Assault §§ 31 to 33, 61 to 63



**CIVJIG 60.51****RETAKING PROPERTY BY FORCE****Use of force to take back property**

A person has the right to use reasonable force to take back property that has been wrongfully taken if:

1. The person had been in possession of the property, and
2. The property was wrongfully taken from the person, and
3. The person had a right to the property when he or she used the force, and
4. The person acted to retake the property in a reasonable time under the circumstances, and
5. The force was used to retake possession of the property, and
6. The person made a demand that the person who had his or her property give it back.

**When a demand is not needed**

[A demand is not necessary if the person reasonably believes:

- [1. It will be useless]
- [2. Making a demand will be dangerous to him or her or another]
- [3. If he or she takes time to make the demand, the other person will be able to get away with or get rid of the property].]

**USE NOTE**

While the instruction is phrased in terms of reasonable time, it should be emphasized that the thrust of the law as exemplified by the Restatement as to how soon a person must act to be entitled to the use of force is toward a more strict requirement of promptness within the overall standard of reasonable time. The use of force as an alternative to legal process in a self-help retaking should not be favored. The longer a person waits, the more likely it is that the person would be using force against one not actively involved in the original taking.

The special verdict questions that should accompany this instruction and CIVJIG 60.54 should ask whether the person recapturing the property was justified, and whether the force used was reasonable under the circumstances.

The bracketed language should be used only in the limited situations where making a demand was useless under the circumstances.

Where force is used, use CIVJIG 60.54, which specifies the amount of force that may be used.

**AUTHORITIES**

The position of the Restatement (Second) of Torts §§ 100–107 (1965), covering the privilege to use force against another for the purpose of retaking possession of chattels of which the actor is dispossessed, is summarized as follows:

Such privilege does not exist unless all the following conditions exist or unless the other knowingly has caused the actor to believe them to exist:

(1) The other has tortiously taken the chattel from the actor's possession or custody without claim of right; or has knowingly acquired the possession or custody of the chattel from a third person who has so taken it from the actor; or having taken it tortiously but in good faith and without force, fraud, or duress, or having knowingly acquired it from one who has so taken it, is about to remove the chattel from the actor's premises; or having received from the actor the custody of the chattel, or having knowingly acquired its possession or custody from one who has so received it, refuses to surrender the chattel or is about to remove it from the actor's premises. (Section 101)

(2) The actor is entitled to the immediate possession of the chattel as against the other. (Section 102)

(3) The recaption is effected promptly after the actor's

dispossession of the chattel or after he should know of it. (Section 103)

(4) The actor has first requested the other to return the chattel, or the actor believes that such a request would be useless, dangerous, or likely to defeat the effective exercise of the privilege. (Section 104)

(5) The force is employed for the purpose of effecting the recaption. (Section 105)

(6) The recaption is effected by the use of force which is no greater than is reasonable and is not intended or likely to cause serious bodily harm or death. (Section 106)

“Recaption” is defined by the Restatement as the taking possession by the actor of a chattel, formerly in the actor’s possession or custody, which is in the possession or custody of another.

The privilege differs from the more limited privilege relative to regaining possession to land, in that chattels are generally more susceptible to damage, loss, or removal from the jurisdiction. Therefore, the privilege with respect to recaption of chattels allows more in the way of emergency action.

*Evertson v. McKay*, 124 Minn. 260, 264, 144 N.W. 950, 951 (1914) includes dicta to the effect that the Restatement position would be followed should the issue be raised in the future.

#### Research References

*West’s Key Number Digest*  
Assault and Battery ⇨15, 43(2)

*Legal Encyclopedias*  
C.J.S., Assault §§ 31 to 33, 61 to 63

## CIVJIG 60.54

**RETAKING PROPERTY BY FORCE—AMOUNT OF  
FORCE JUSTIFIED****Reasonable force to take back property**

A person has the right to use reasonable force to take back property.

He or she:

1. May only use the amount of force reasonably necessary for that purpose, and
2. May not use force likely to cause death or serious injury.

---

**USE NOTE**

This instruction complements CIVJIG 60.51, which defines the circumstances when it is permissible to use force to recapture chattels.

**AUTHORITIES**

Restatement (Second) of Torts § 106 (1965), provides:

The use of force against another for purposes of recaption is not privileged unless the means employed are

(a) not in excess of those which the actor correctly or reasonably believes to be necessary to effect the recaption, and

(b) not intended or likely to cause death or serious bodily harm.

**Research References**

*West's Key Number Digest*  
Assault and Battery ⇨15, 43(2)

*Legal Encyclopedias*  
C.J.S., Assault §§ 31 to 33, 61 to 63



**CIVJIG 60.57****DAMAGES—EXCESSIVE FORCE OR RESTRAINT****Damages for excessive force**

If (defendant) (used excessive force) (restrained (plaintiff) for an unreasonable period of time), you should award (plaintiff) damages resulting from the (use of force) (restraint) in excess of what was reasonably necessary.

---

**USE NOTE**

If the defendant used excessive force, or exceeded the bounds of a privilege, this instruction should be utilized to inform the jury that the defendant is held responsible for the injuries that result.

**AUTHORITIES**

The Restatement (Second) of Torts § 107 (1965), takes the position that where the privilege to use force exists, but the means employed for the purpose of taking back property exceed the privilege (reasonableness), the actor is liable only for the excess. The analogy is made to Restatement (Second) of Torts § 71, which is concerned with excessive force used in self defense. The comments to section 71 that the actor must be held liable for all the harm resulting from the use of force if the damages are indivisible. Restatement (Second) of Torts § 107 cmt. b; Dan B. Dobbs et al., *The Law of Torts* 2d § 80 (2011).

**Research References**

*West's Key Number Digest*  
Assault and Battery Ⓒ7, 36, 43(5)

*Legal Encyclopedias*  
C.J.S., Assault §§ 1 to 2, 6 to 7, 11 to 12, 28, 61 to 63, 67 to 72

**CIVJIG 60.60****USE OF DEADLY FORCE—PEACE OFFICER****Definition of “deadly force”**

“Deadly force” is force:

1. Used to cause or create a substantial risk of death or great bodily harm, or
2. Which the officer should reasonably know creates a substantial risk of death or great bodily harm.

[Intentionally firing a gun in the direction of another person, or at a vehicle in which another person is believed to be, is deadly force.]

**Police use of deadly force**

A peace officer has the right to use deadly force in the line of duty only when necessary to:

- [1. Protect (himself or herself) (or another) from apparent death or great bodily harm]
- [2. Arrest or capture, or prevent the escape of, a person who the peace officer knows or has reasonable grounds to believe has committed, or has attempted to commit a felony involving the use, or the threatened use, of deadly force], or
- [3. Arrest or capture, or prevent the escape of, a person who the officer knows or has reasonable grounds to believe has committed or has attempted to commit a felony. The officer must also reasonably believe that the person will cause death or great bodily harm if the person’s capture is delayed].

---

**USE NOTE**

This instruction is intended for use in cases where the issue is

whether a police officer used deadly force. The right to use deadly force is narrowly limited by statute.

### AUTHORITIES

The instruction tracks M.S.A. § 609.066, which reads as follows:

**Subdivision 1. Deadly force defined.** For the purposes of this section, “deadly force” means force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force . . . .

**Subd. 2. Use of deadly force.** Notwithstanding the provisions of section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only when necessary:

(1) To protect the peace officer or another from apparent death or great bodily harm;

(2) To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or

(3) To effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person’s apprehension is delayed.

**Subd. 3.** This section and sections 609.06, 609.065 and 629.33 may not be used as a defense in a civil action brought by an innocent third party.

### Research References

*West’s Key Number Digest*  
Arrest ⇨68(2)

*Legal Encyclopedias*  
C.J.S., Arrest §§ 52 to 53

**CIVJIG 60.63****REASONABLE FORCE****Reasonable force**

A person may not use more force than a reasonable person would use in similar circumstances.

Reasonable force may be used by a person when that person reasonably believes the circumstances justify it, even if the circumstances do not in fact exist.

**Justifying reasonable force**

Reasonable force may be used by:

- [1. A public officer or one assisting the officer under the officer's direction:
  - a. In making a lawful arrest
  - b. In performing a legal process
  - c. In enforcing an order of the court
  - d. In performing a legal duty]
- [2. A person who is not a public officer, in arresting another person and turning that person over to an officer who has the authority to take custody of that person]
- [3. Any person in resisting or aiding another to resist an offense against the person]
- [4. Any person protecting his or her real or personal property, or by another assisting that person, in stopping trespassers or other illegal interference with this property]



- [5. Any person to prevent the escape, or to retake following the escape, of a person legally held on a charge or conviction of a crime]
- [6. A parent, guardian, teacher, or other lawful custodian of a child or pupil, using lawful authority, to restrain or correct the child or pupil]
- [7. A school employee or school bus driver, using lawful authority, to restrain a child or pupil, or to prevent bodily harm or death to another person]
- [8. A common carrier in expelling a passenger who refuses to obey rules or regulations, as long as reasonable care is used for the passenger's personal safety]
- [9. An authorized person when used to restrain a person with a mental illness or a person with a developmental disability from injuring himself or herself or another, or to make that person comply with reasonable requirements for control, conduct, or treatment]
- [10. A public or private institution providing custody of or treatment to someone legally committed, to make that person comply with reasonable requirements for the person's control, conduct, or treatment].

---

#### USE NOTE

This instruction is intended for use in cases involving the use of force. M.S.A. § 609.06, subd. 1, defines several cases in which reasonable force may be used. The instruction tracks the statute. Only the relevant bracketed parts of the instruction should be used.

#### AUTHORITIES

The instruction is based on M.S.A. § 609.06, subd. 1, which reads as follows:

Except as otherwise provided in subdivision 2, reasonable force

may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

(1) when used by a public officer or one assisting a public officer under the public officer's direction:

(a) in effecting a lawful arrest; or

(b) in the execution of legal process; or

(c) in enforcing an order of the court; or

(d) in executing any other duty imposed upon the public officer by law; or

(2) when used by a person not a public officer in arresting another in the cases and in the manner provided by law and delivering the other to an officer competent to receive the other into custody; or

(3) when used by any person in resisting or aiding another to resist an offense against the person; or

(4) when used by any person in lawful possession of real or personal property, or by another assisting the person in lawful possession, in resisting a trespass upon or other unlawful interference with such property; or

(5) when used by any person to prevent the escape, or to retake following the escape, of a person lawfully held on a charge or conviction of a crime; or

(6) when used by a parent, guardian, teacher or other lawful custodian of a child or pupil, in the exercise of lawful authority, to restrain or correct such child or pupil; or

(7) when used by a school employee or school bus driver, in the exercise of lawful authority, to restrain a child or pupil, or to prevent bodily harm or death to another; or

(8) when used by a common carrier in expelling a passenger who refuses to obey a lawful requirement for the conduct of passengers and reasonable care is exercised with regard to the passenger's personal safety; or

(9) when used to restrain a person with a mental illness or a person with a developmental disability from self-injury or injury to another or when used by one with authority to do so

to compel compliance with reasonable requirements for the person's control, conduct or treatment; or

(10) when used by a public or private institution providing custody or treatment against one lawfully committed to it to compel compliance with reasonable requirements for the control, conduct or treatment of the committed person.

M.S.A. § 609.06, subd. 2, limits the right to use deadly force against peace officers:

Deadly force may not be used against peace officers who have announced their presence and are performing official duties at a location where a person is committing a crime or an act that would be a crime if committed by an adult.

### Research References

#### *West's Key Number Digest*

Arrest Ⓒ68(2); Assault and Battery Ⓒ13, 14, 43(2)

#### *Legal Encyclopedias*

C.J.S., Arrest §§ 52 to 53; Assault §§ 25 to 30, 61 to 63

**CONVERSION****CIVJIG 60.65****CONVERSION****Definition of “conversion” of personal property**

Personal property is “converted” if a person:

1. Intentionally exercises control over an owner’s personal property in a way that is contrary to the owner’s right to the personal property, or
2. Intentionally destroys or changes the personal property, or
3. Intentionally deprives the owner of possession of the property permanently, or for an indefinite period of time.

---

**USE NOTE**

This instruction is intended for use in cases where the issue is whether personal property was converted. Conversion may occur in a variety of ways. Rather than using the entire definition, only the relevant part of the definition should be used in the case. The correlative special verdict question should ask: “Did (Name of Defendant’s) action result in a conversion of (Name of Plaintiff’s) personal property?”

**AUTHORITIES**

The Restatement (Second) of Torts § 222A (1965), defines “conversion” as follows:

(1) Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.

(2) In determining the seriousness of the interference and the justice of requiring the actor to pay the full value, the following factors are important:

- (a) the extent and duration of the actor’s exercise of dominion or control;



- (b) the actor's intent to assert a right in fact inconsistent with the other's right of control;
- (c) the actor's good faith;
- (d) the extent and duration of the resulting interference with the other's right of control;
- (e) the harm done to the chattel;
- (f) the inconvenience and expense caused to the other.

In *Inland Construction Corp. v. Continental Casualty Co.*, 258 N.W.2d 881 (Minn. 1977) (conversion exists where there is no allegation of property damage), the supreme court noted that "Professor Prosser has described the 'gist of conversion' as an interference with the plaintiff's right to control his property." 258 N.W.2d at 884 (citing both Restatement (Second) of Torts § 222A, and *Hildegarde, Inc. v. Wright*, 244 Minn. 410, 413, 70 N.W.2d 257, 259 (1955)). The court in *Inland Construction* also noted that it is evident from the authorities "that personal property may be converted . . . without causing physical damage or destruction to the property." 258 N.W.2d at 884.

In *Christensen v. Milbank Ins. Co.*, 658 N.W.2d 580 (Minn. 2003), the supreme court noted that it has defined conversion as "'an act of willful interference with [the personal property of another], done, without lawful justification, by which any person entitled thereto is deprived of use and possession,' and 'the exercise of dominion and control over goods inconsistent with, and in repudiation of, the owner's rights in those goods.'" 658 N.W.2d at 585, citing *Larson v. Archer-Daniels Midland Co.*, 226 Minn. 315, 317, 32 N.W.2d 649, 650 (1948) and *Rudnitski v. Seely*, 452 N.W.2d 664, 668 (Minn. 1990). See also *Williamson v. Prasciunas*, 661 N.W.2d 645, 649 (Minn. Ct. App. 2003). The court in *Christensen* also noted with approval the concept of intent in the Restatement (Second) of Torts § 223 cmt. c (1965):

The intention necessary to subject to liability one who deprives another of the possession of his chattel is merely the intention to deal with the chattel so that such dispossession results. It is not necessary that the actor intend to commit what he knows to be a trespass or a conversion. It is, however, necessary that his act be one which he knows to be destructive of any outstanding possessory right, if such there be.

*Christensen*, 658 N.W.2d at 585–86.

The wrongful refusal to deliver property on demand by the owner is also a conversion. *Molenaar v. United Cattle Co.*, 553 N.W.2d 424, 430–31 (Minn. Ct. App. 1996), rev. denied (Minn. Oct. 15, 1996) (theft of heifers).

In *Halla v. Norwest Bank*, 601 N.W.2d 449 (Minn. Ct. App. 1999),

rev. denied (Minn. Dec. 14, 1999), the issue was whether a separate common law cause of action existed for the conversion of checks. Check conversion is governed by M.S.A. § 336.3-420(a), which reads in part as follows:

The law applicable to the conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment.

The court of appeals interpreted the statute to include the common law definition of conversion, but not to permit a separate common remedy for the conversion of negotiable instruments. 601 N.W.2d at 451.

In *Thomas B. Olson & Associates, P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907 (Minn. Ct. App. 2008), rev. denied (Minn. Jan. 20, 2009), the court of appeals held that an attorney lien holder may assert a claim for conversion against an individual who interferes with the property covered by the lien:

Conversion is “an act of willful interference with personal property, done without lawful justification by which any person entitled thereto is deprived of use and possession.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn.1997) (quotation omitted); *see also Hildegarde, Inc. v. Wright*, 244 Minn. 410, 413, 70 N.W.2d 257, 259 (1955). A lien holder may hold an individual liable for conversion if the individual interferes with the property that is the subject of the lien. *Conner v. Caldwell*, 208 Minn. 502, 508–09, 294 N.W. 650, 654 (1940). But a “plaintiff’s lack of an enforceable interest in the subject property is a complete defense against conversion.” *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 838 (Minn.App.1994) review denied (Minn. June 29, 1994); *see also Larson v. Archer-Daniels-Midland Co.*, 226 Minn. 315, 317, 32 N.W.2d 649, 650 (1948).

In *Faegre & Benson, LLP v. R & R Investors*, 772 N.W.2d 846 (Minn. Ct. App. 2009), the court of appeals held that a law firm’s interpleader action to determine the owner of proceeds of a settlement did not constitute conversion of the settlement proceeds. The court relied on *Fawcett v. Heimach*, 591 N.W.2d 516, 519–20 (Minn. Ct. App. 1999), which defined conversion as “an act of willful interference with the personal property of another that is *without justification* or that is inconsistent with the right of the person entitled to the use, possession, or ownership of the property.” (Emphasis the court’s)

#### Research References

*West’s Key Number Digest*  
Trover and Conversion §1, 67

*Legal Encyclopedias*  
C.J.S., Trover and Conversion §§ 1 to 3, 5 to 7, 111 to 112

**FALSE IMPRISONMENT****CIVJIG 60.70****FALSE IMPRISONMENT—DEFINITION****Proof of false imprisonment**

False imprisonment occurred if:

1. (Defendant) intentionally restricted the physical liberty of (plaintiff) by words or acts, and
2. (Plaintiff) was aware of the words or acts [or was harmed by them].

[This restriction may be caused by words or by acts, including:

1. The use of physical barriers, or
2. The use of physical force, or
3. The threat of the immediate use of physical force.

It must be proved that (plaintiff) believed (defendant) had the ability to carry out the threat.]

**Complete restriction**

This restriction must be complete. A restriction is complete if there is no reasonable means of escape known to the person.

[There was no complete restriction if (plaintiff) was just kept from a particular area or prevented from going in a particular direction.]

---

**USE NOTE**

A prima facie showing of lack of consent is not imposed on plaintiff. Privilege, including proof of a valid arrest and actual or implied consent,



is an affirmative defense. The first set of brackets in the instruction refers to cases where the plaintiff is unaware of the confinement but is nonetheless injured. False imprisonment actions may be asserted where injury occurs, notwithstanding the lack of knowledge of the confinement.

The language in the second set of brackets defines the ways in which actionable restraints may occur. Only the language appropriate to the case should be used.

The third set of brackets includes language stating that there is no restraint if a person is simply prevented from going into a particular area or in a particular direction. It should be used only in cases where there is a question concerning the issue of complete confinement. In general, if the only restraint on freedom is that the person is inconvenienced by being prevented from going in a particular area, there should be no false imprisonment as a matter of law.

### AUTHORITIES

The clearest statement of false imprisonment by a Minnesota court is contained in *Durgin v. Cohen*, 168 Minn. 77, 79, 209 N.W. 532, 533 (1926):

To constitute an unlawful arrest or a false imprisonment, it is not necessary that force be used. The wrong is one which may be committed by acts or words or by both. An unlawful restraint of the plaintiff, or an interference with his personal liberty is essential, but he is deemed to have been put under restraint if words or acts induced a reasonable apprehension that force would be used if he did not submit. In short, any unlawful exercise or show of force by which a person is compelled to remain where he does not wish to remain or to go, is actionable.

False imprisonment consists of three elements: (1) words or acts intended to confine a person; (2) actual confinement; and (3) awareness by the person that he or she is confined. *Eilers v. Coy*, 582 F.Supp. 1093, 1096 (D.Minn. 1984); *Peterson v. Sorlien*, 299 N.W.2d 123, 133 (Minn. 1980), cert. denied, 450 U.S. 1031, 101 S.Ct. 1742, 68 L.Ed.2d 227 (1981); *Blaz v. Molin Concrete Prods. Co.*, 309 Minn. 382, 385, 244 N.W.2d 277, 279 (1976); Restatement (Second) of Torts § 35 (1965).

False imprisonment is "any imprisonment which is not legally justifiable." *Kleidon v. Glascock*, 215 Minn. 417, 425, 10 N.W.2d 394, 397 (1943). Even where the arrest is originally lawful, a detention of the prisoner for unreasonable time without taking him before a committing magistrate will constitute false imprisonment. See *Anderson v. Averbek*, 189 Minn. 224, 225, 248 N.W. 719, 719-20 (1933).

The restraint must be unlawful, and it has been held that an arrest under an unconstitutional ordinance constitutes false imprisonment.



See *Judson v. Reardon*, 16 Minn. 431 at 3 (Gill.387) (1871). On the other hand, it has been held that detention of a prisoner beyond expiration of his sentence, where there was nothing in the commitment warrant received by the jailer to inform the jailer that the prisoner had already served a part of the sentence prior to delivery under the commitment, does not constitute false imprisonment. See *Peterson v. Lutz*, 212 Minn. 307, 308, 3 N.W.2d 489, 489 (1942).

In an action for false imprisonment, where an officer arrests a person without a warrant, the officer has the burden of pleading and proving justification for the restraint. Otherwise, the arrest is prima facie unlawful. See *Evans v. Jorgenson*, 182 Minn. 282, 284 234 N.W. 292, 293 (1931).

The Minnesota arrest statutes include: M.S.A. §§ 629.32; 629.33; 629.34; 629.36; 629.37; 629.38; 629.39; 629.402, and 629.366. If an arrest is made without proper legal authority, it is a false arrest, and, therefore, a false imprisonment. See *Lundeen v. Renteria*, 302 Minn. 142, 146, 224 N.W.2d 132, 135 (1974).

The instruction adopts the view of the Restatement, Second, Torts. Thus, an action for false imprisonment arises where there is "confinement" to a particular area, as opposed to "exclusion" from a particular area or prevention from proceeding in a particular direction. Restatement (Second) of Torts § 36 cmt. d, illus. 10, 11 (1965).

A person is not confined so as to be falsely imprisoned if a reasonable means of escape exists that is known to the person. See also Dan B. Dobbs et al., *The Law of Torts* 2d § 41 (2011). The confinement is complete if an existing means of escape is unknown to the plaintiff (e.g., there is no false imprisonment if the plaintiff is aware of a reasonable, nondangerous means of escape). *Peterson v. Sorlien*, 299 N.W.2d 123, 128 (Minn. 1980), cert. denied, 450 U.S. 1031, 101 S.Ct. 1742, 68 L.Ed.2d 227 (1981). A means of escape is unreasonable if it involves danger of substantial bodily harm to another or material harm to clothing, or if it is offensive to a reasonable sense of decency or personal dignity. See Restatement (Second) of Torts § 36 cmt. a.

Consent is a defense to a claim for false imprisonment. See *Eilers v. Coy*, 582 F.Supp. 1093, 1097 (D.Minn. 1984); *Peterson v. Sorlien*, 299 N.W.2d 123, 128 (Minn. 1980) cert. denied, 450 U.S. 1031, 101 S.Ct. 1742, 68 L.Ed.2d 227 (1981).

In *Smits v. Wal-Mart Stores, Inc.*, 525 N.W.2d 554, 558 (Minn. Ct. App. 1994), rev. denied (Minn. Feb. 14, 1995), the court of appeals held that the merchant's detention statute, M.S.A. § 629.366, was inapplicable in a case where a merchant did not detain a suspect, but rather made a false report to a police officer.

The court in *Smits* also held that:

A party is not liable for false imprisonment for conveying informa-

tion about suspected criminal activity unless that party directly persuades or commands the police to detain the suspect. See Restatement (Second) of Torts, § 45A cmt. c (1965). Unless a person's conduct rises to the level of instructing the police to arrest a person, no liability can be imposed. Restatement (Second) of Torts, § 45A cmt. c (1965); see *Ward v. National Car Rental Sys.*, 290 N.W.2d 441, 442 (Minn. 1980) (clerk telling police to bring plaintiff to airport constituted "instigating" the detention).

525 N.W.2d at 558.

#### Research References

*West's Key Number Digest*

False Imprisonment ¶1, 40

*Legal Encyclopedias*

C.J.S., False Imprisonment §§ 2 to 10, 12 to 18, 20, 22 to 26, 28 to 36, 44 to 46, 49, 58, 60

## INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

### CIVJIG 60.75

## INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

### Intentionally causing emotional distress

To show the intentional infliction of emotional distress, it must be proved that:

1. The conduct of (defendant) was so extreme and outrageous that it passed the boundaries of decency and is utterly intolerable to the civilized community, and
2. The conduct was intentional or reckless, and
3. The conduct caused emotional distress to (plaintiff), and
4. The distress was so severe that no reasonable person could be expected to endure it.

---

### USE NOTE

This instruction is intended for use in cases involving claims for the intentional infliction of emotional distress. Claims for the negligent infliction of emotional distress are handled under the general negligence instruction, CIVJIG 25.10. This instruction may be coupled with appropriate special verdict questions that track the elements of the claim.

In *Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 870 (Minn. 2003), the supreme court held that in intentional infliction of emotional distress claims “[t]he appropriate method of proving the severity and causation of emotional distress is through medical testimony.” The court has also required proof of physical symptoms arising out of the emotional distress. 664 N.W.2d at 869–70.

The rigid restrictions applied to claims for intentional infliction of emotional distress may be inapplicable to statutory claims for emotional distress. *E.g.*, *Navarre v. South Washington County Schools*, 652 N.W.2d



9, 30 (Minn. 2002) (statutory action for violation of the Minnesota Government Data Practices Act, M.S.A. § 13.08, subd. 1, making a person who violates the statute liable to a person who suffers “any damage” because of the violation). In those cases, this instruction is inappropriate.

### AUTHORITIES

Restatement (Second) of Torts § 46 (1965), reads as follows:

(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

(2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress

(a) to a member of such person’s immediate family who is present at the time, whether or not such distress results in bodily harm, or

(b) to any other person who is present at the time, if such distress results in bodily harm.

The Minnesota Supreme Court adopted the first paragraph of section 46 in *Hubbard v. United Press Int’l*, 330 N.W.2d 428 (Minn. 1983) in establishing standards for emotional distress claims in Minnesota:

The commentary to the Restatement emphasizes the high threshold standard of proof required of a complainant before his case may be submitted to a jury. We have previously noted that the type of actionable conduct referred to in the Restatement as “extreme and outrageous” must be “so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community.” \* \* \* A complainant must sustain a similarly heavy burden of production in his allegations regarding the severity of his mental distress. Expounding the meaning of “severe emotional distress,” the Restatement commentary says in part that “[t]he law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it.” \* \* \* In explaining both the extreme nature of the conduct necessary to invoke this tort, and the necessary degree of severity of the consequent mental distress, the Restatement’s commentary emphasizes the limited scope of this cause of action, and clearly reflects a strong policy to prevent fictitious and speculative claims. Because this policy has long been a central feature of Minnesota law on the availability of damages for mental distress, our adoption of the Restatement formulation as the standard for the independent tort of intentional infliction of emotional distress does not signal an appreciable expansion in the



scope of conduct actionable under this theory of recovery. The operation of this tort is sharply limited to cases involving particularly egregious facts.

330 N.W.2d at 439.

In order to establish a claim for intentional infliction of emotional distress, the plaintiff must prove four elements:

- (1) the conduct must be extreme and outrageous;
- (2) the conduct must be intentional or reckless;
- (3) it must cause emotional distress; and
- (4) the distress must be severe.

*Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 864 (Minn. 2003); *Ferrell v. Cross*, 557 N.W.2d 560, 565 (Minn. 1997); *K.A.C. v. Benson*, 527 N.W.2d 553, 560 (Minn. 1995); *Singleton v. Christ The Servant Evangelical Lutheran Church*, 541 N.W.2d 606, 613 (Minn. Ct. App. 1996), rev. denied (Minn. March 19, 1996), cert. denied 519 U.S. 870, 117 S.Ct. 184, 136 L.Ed.2d 123 (1996); *Lee v. Metropolitan Airport Comm'n*, 428 N.W.2d 815, 823 (Minn. Ct. App. 1988); see *Born v. Medico Life Ins. Co.*, 428 N.W.2d 585, 589 (Minn. Ct. App. 1988), rev. denied, (Minn. Nov. 16, 1988).

To be "extreme and outrageous," conduct must be "so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community." *Ferrell v. Cross*, 557 N.W.2d 560, 565 (Minn. 1997). The standard has been applied stringently. In *Hempel v. Fairview Hospitals & Healthcare Services, Inc.*, 504 N.W.2d 487, 493 (Minn. Ct. App. 1993), the court of appeals concluded that the conduct of hospital employees in restraining the son of the plaintiffs, which led to his death from cardiac arrest, was not so unusual as to qualify as behavior that is "utterly intolerable in a civilized community." In *Singleton v. Christ the Servant Evangelical Lutheran Church*, 541 N.W.2d 606, 614 (Minn. Ct. App. 1996), rev. denied (Minn. March 19, 1996), cert. denied 519 U.S. 870, 117 S.Ct. 184, 136 L.Ed.2d 123 (1996), the court of appeals concluded in a case involving disputes arising out of the relationship of a pastor with his church and synod that the plaintiff "has not met the high standard of proof necessary in Minnesota to present to the jury his intentional infliction of emotional distress claim." Also, see *Arcadia Development Corp. v. City of Bloomington*, 552 N.W.2d 281, 289 (Minn. Ct. App. 1996).

The defendant must "intend to cause severe emotional distress or proceed with the knowledge that it is substantially certain, or at least highly probable, that severe emotional distress will occur." *K.A.C. v. Benson*, 527 N.W.2d 553, 559 (Minn. 1995), citing *Dornfeld v. Oberg*, 503 N.W.2d 115, 119 (Minn. 1993).

In determining whether the evidence of severe distress is sufficient, the trial court "may look to the intensity and duration of the distress." *Bohdan v. Alltool Mfg. Co.*, 411 N.W.2d 902, 908 (Minn. Ct. App. 1987), appeal after remand, 1989 WL 23330 (Minn. Ct. App. 1989). However, "if the claimed distress is the type people commonly encounter and endure in their lives, the claim should not be submitted to the jury." *Lee v. Metropolitan Airport Comm'n*, 428 N.W.2d at 823; *Bohdan*, 411 N.W.2d at 908. Put another way, "[i]f severe emotional distress results, but the distress is exaggerated compared to what a reasonable person would experience, the defendant is not liable unless the defendant was aware that the plaintiff was particularly susceptible to such distress . . . ." *Frey v. Ramsey County Community Human Services*, 517 N.W.2d 591, 601 (Minn. Ct. App. 1994). Summary judgment is appropriate in cases where the plaintiff is unable to meet the "high threshold standard of proof needed for an intentional infliction of emotional distress claim." *Lee*, 428 N.W.2d at 823; see also *Mrozka v. Archdiocese of St. Paul & Minneapolis*, 482 N.W.2d 806, 813-14 (Minn. Ct. App. 1992), rev. denied (Minn. May 24, 1992).

There must be a sufficient causal relationship between any alleged damages and the claimed emotional distress. See *Odegard v. Finne*, 500 N.W.2d 140, 144 (Minn. Ct. App. 1993). The lack of medical testimony to substantiate the plaintiff's claim of physical manifestations and physical distress arising out of the emotional distress will preclude recovery. In *Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 870 (Minn. 2003), the supreme court held that "[t]he appropriate method of proving the severity and causation of emotional distress is through medical testimony."

In *Bohdan*, the court also stated that:

Even if severe emotional distress exists, the defendant may escape liability if the distress is exaggerated in comparison to what a reasonable person would experience under the circumstances, unless it results from a peculiar susceptibility to such distress of which the defendant has knowledge . . . . The supreme court has stressed the importance of a sufficient showing of the severity of the emotional injury.

411 N.W.2d at 908.

In *Johnson v. Morris*, 453 N.W.2d 31 (Minn. 1990), which involved claims arising out of the plaintiff's stop by police officers, the court held that the plaintiff failed to "demonstrate the level of distress needed as an element of this type of cause of action. His 'signs and symptoms of depression' fall far short of being that type of distress which 'no reasonable man could be expected to endure . . . .'" 453 N.W.2d at 41.

In *Elstrom v. Independent School Dist. No. 270*, 533 N.W.2d 51 (Minn. Ct. App. 1995), rev. denied (Minn. July 27, 1995), the plaintiff suffered "insomnia, crying spells, a fear of answering her door and telephone, and depression, which caused her to seek treatment." The



court concluded that she did not state a valid claim because the distress was not severe enough. 533 N.W.2d at 57.

The right to recover damages for emotional distress is limited in other ways also. Damages for intentional infliction of emotional distress that relate to alienation of a spouse's affections are not allowed, because these damages "would defeat the legislature's stated purpose in abolishing the heart balm actions." *R.E.R. v. J.G.*, 552 N.W.2d 27, 29 (Minn. Ct. App. 1996). Damages for emotional distress are not recoverable in a legal malpractice action, absent a direct violation of the plaintiff's rights by proof of willful, wanton, or malicious conduct. *Lickteig v. Alderson, Ondov, Leonard & Sween*, 556 N.W.2d 557, 562 (Minn. 1996).

In cases under the Human Rights Act, M.S.A. § 363A.029, subd. 4, damages for "mental anguish or suffering" may be awarded by an administrative law judge who finds that "the respondent has engaged in an unfair discriminatory practice." § The restrictive standards for intentional infliction of emotional distress claims established by the supreme court in *Hubbard v. United Press International, Inc.*, 330 N.W.2d 428 (Minn. 1983) are inapplicable to claims under the Human Rights Act. See *State v. Mower County Social Serv.*, 434 N.W.2d 494, 499–500 (Minn. Ct. App. 1989).

In *Ferrell v. Cross*, 557 N.W.2d 560, 565 (Minn. 1997), the Minnesota Supreme Court again emphasized that "[t]ort claims seeking damages for mental distress generally have not been favored in Minnesota. We have been careful to restrict the availability of such damages to those plaintiffs who prove that emotional injury occurred under circumstances tending to guarantee its genuineness." 557 N.W.2d at 566, n.6, citing *Hubbard v. United Press Internat'l, Inc.*, 330 N.W.2d 428, 437 (Minn. 1983). Also see *Lickteig v. Alderson, Ondov, Leonard & Sween*, 556 N.W.2d 557, 560 (Minn. 1996); *K.A.C. v. Benson*, 527 N.W.2d 553, 559 (Minn. 1995); *Bohdan v. Alltool Mfg. Co.*, 411 N.W.2d 902, 908 (Minn. Ct. App. 1987), appeal after remand, 1989 WL 23330 (Minn. Ct. App. 1989).

For other emotional distress cases applying the supreme court standard set out in *Hubbard*, see *Wenigar v. Johnson*, 712 N.W.2d 190, 208 (Minn. Ct. App. 2006); *Cafferty v. Garcia's of Scottsdale, Inc.*, 375 N.W.2d 850 (Minn. Ct. App. 1985); *Oswalt v. Ramsey County*, 371 N.W.2d 241 (Minn. Ct. App. 1985); *Venes v. Professional Serv. Bureau, Inc.*, 353 N.W.2d 671 (Minn. Ct. App. 1984); *Eklund v. Vincent Brass and Aluminum Co.*, 351 N.W.2d 371 (Minn. Ct. App. 1984).

Restatement (Second) of Torts § 48 (1965), provides for the award of damages for emotional distress in cases involving public utilities or common carriers:

A common carrier or other public utility is subject to patrons utilizing its facilities for gross insults which reasonably offend them, inflicted by the utility's servants while otherwise acting within the scope of their employment.

There is no recommended jury instruction based on section 48 because of the strong position taken on emotional distress claims in *Hubbard*.

**Research References**

*West's Key Number Digest*  
Damages ⚡57.19



## NUISANCE

## CIVJIG 60.80

## PRIVATE NUISANCE—DEFINITION

**Definition of “nuisance”**

A “nuisance” is anything that is:

1. Harmful to the health of a property owner, or
2. Indecent or offensive to the property owner’s senses, or
3. An obstruction to the free use of the property,

And that materially and substantially interferes with the comfortable enjoyment of life or property.

In deciding whether the interference is material and substantial, you must compare the interference with the standards of ordinary people in the area in which the property is located.

**Wrongfully creating a nuisance**

(Defendant) wrongfully created a nuisance if:

- [1. (He) (she) created the nuisance intentionally. This means (defendant):
  - a. Purposely caused the nuisance, or
  - b. Knew that (his) (her) conduct was causing the nuisance, or
  - c. Knew that the nuisance was substantially certain to result.]
- [2. (He) (She) was negligent, and the nuisance was directly caused by (defendant)’s failure to use reasonable care. Negligence occurs when a person:

- a. Does something a reasonable person would not do in similar circumstances, or
- b. Fails to do something a reasonable person would do in similar circumstances.

“Reasonable care” is the care a reasonable person would use in similar circumstances.]

- [3. (He) (she) acted in other ways to wrongfully create the nuisance.]

---

### USE NOTE

This instruction applies to nuisance claims. Nuisance requires a showing of wrongful conduct, which may be described in various ways. It may be based on intent, negligence, or strict liability. The issue of whether an activity is abnormally dangerous will have to be decided by the court as a matter of law.

### AUTHORITIES

M.S.A. § 561.01, which reads as follows:

Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

In *Jedneak v. Minneapolis General Electric Co.*, 212 Minn. 226, 4 N.W.2d 326 (1942), a case involving a claimed nuisance due to the defendant power company’s activities in an urban area, the supreme court said that “the rule is that the residents living in the vicinity of the objectionable activity are to be protected against a material and substantial interference with their ordinary physical comfort,” and that the degree of discomfort has to be measured by the “standards of ordinary people” in relationship to the area where they reside. 212 Minn. at 229–30, 4 N.W.2d at 328; *see also Citizens for a Safe Grant v. Lone Oak Sportsmen’s Club, Inc.*, 624 N.W.2d 796, 804 (Minn. Ct. App. 2001). The position is similar to that taken in the Restatement (Second) of Torts § 821F (1979) (“There is liability for a nuisance only to those to whom it causes significant harm, of a kind that would be suffered by a normal person in the community or by property in normal condition and used for a normal purpose.”).

In *Highview North Apartments v. Ramsey*, 323 N.W.2d 65 (Minn. 1982), the supreme court stated that “there must be some kind of conduct causing the nuisance harm which is ‘wrongful.’ \* \* \* This wrongful conduct varies, and may at times be characterized as intentional conduct, negligence, ultrahazardous activity, violation of a statute or some other tortious activity.” 323 N.W.2d at 70–71. *See also Randall v. Excelsior*, 258 Minn. 81, 86, 103 N.W.2d 131, 135 (1960) (“Merely attaching the label ‘nuisance’ to an action for personal injuries does not alter the nature of the action. Where the acts or omissions constituting negligence are the identical acts which it is asserted give rise to a cause of action for nuisance, the rules applicable to negligence will be applied.”); *Wendinger v. Forst Farms Inc.*, 662 N.W.2d 546 (Minn. Ct. App. 2003).

Specific rules apply in cases involving agricultural operations, defined as “a facility and its appurtenances for the production of crops, livestock, poultry, dairy products or poultry products, but not a facility primarily engaged in processing agricultural products.” M.S.A. § 561.19. The Act provides that an agricultural operation “is not and shall not become a private or public nuisance after two years from its established date of operation as a matter of law if it”:

- (1) is located in an agriculturally zoned area;
- (2) complies with the provisions of all applicable federal, state, or county laws, regulations, rules, and ordinances and any permits issued for the agricultural operation; and
- (3) operates according to generally accepted agricultural practices.

M.S.A. § 561.19, subd. 2(a).

For a period of two years from its established date of operation, there is a rebuttable presumption that an agricultural operation in compliance with the requirements of paragraph (a), clauses (1) to (3), is not a public or private nuisance. M.S.A. § 561.19, subd. 2(b).

In *Graffunder v. City of Mahtomedi*, 376 N.W.2d 282 (Minn. Ct. App. 1985), the court of appeals noted that “[a] party has a duty to act reasonably in avoiding the consequences of the tortfeasor’s act, and that the failure to take reasonable steps to mitigate damages is ‘fault’ which may be apportioned under the Comparative Fault Act.” 376 N.W.2d at 285, citing *Lesmeister v. Dilly*, 330 N.W.2d 95, 103 (Minn. 1983).

Particulate matter drifting onto a piece of property may be a nuisance, but it is not a trespass. In *Johnson v. Paynesville Farmers Union Co-op. Oil Co.*, 817 N.W.2d 693 (Minn. 2012), cert. denied, 133 S. Ct. 1249, 185 L. Ed. 2d 180 (2013), the defendant Cooperative was spraying pesticide on conventionally farmed fields, and some of the pesticide drifted onto fields owned by organic farmers Oluf and Debra



Johnson. The Johnsons complained to the Minnesota Department of Agriculture (MDA), and reported the incidents of drift to their certifying agent, the Organic Crop Improvement Association (OCIA). Following the 2007 drift onto their soybean field, the OCIA sent the Johnsons a letter stating that the Johnsons needed to take their land through a 36-month transitional period, precluding them from selling their soybeans as organic for three years. After the MDA confirmed the 2008 drift onto their alfalfa field, the Johnsons took that field out of organic production for three years. The Johnsons filed a lawsuit against Cooperative, claiming trespass, negligence per se, and nuisance. The supreme court held the drift of intangible, particulate matter may interfere with a property owner's use and enjoyment of the property, but it does not interfere with the owner's possessory rights. Recognizing a claim for trespass in this case would blur the line between trespass and nuisance, the court concluded that because the Johnsons did not allege that "a tangible object invaded their land," their claim for trespass failed as a matter of law. *Id.* at 705.

#### Research References

*West's Key Number Digest*

Nuisance ⚡2, 3, 54

*Legal Encyclopedias*

C.J.S., Nuisances §§ 10 to 14, 17 to 18, 20 to 23, 25, 28 to 45, 48 to 57, 59 to 60, 62, 143



**CIVJIG 60.86****TRESPASS TO LAND PRIVILEGE—ENTRY TO  
ABATE A PRIVATE NUISANCE****Right to enter a neighbor's land**

A person who possesses land has the right to enter neighboring lands to correct a condition that damages [or soon threatens to damage] his or her own land.

This person may enter only if there is an emergency that needs immediate action that the person could not get by resorting to the law. This entry must be reasonable and take into account the relative dangers and benefits involved.

---

**USE NOTE**

This instruction is intended for use in cases where the person who possesses land enters neighboring land to correct a threatening condition. Note that the use of the privilege is limited.

**AUTHORITIES**

This summary method of redressing a grievance is authorized only in cases of particular emergency requiring more speedy remedy than can be had by the ordinary proceedings at law.

This extrajudicial remedy does not exist as a matter of absolute right, nor is its use justified under all circumstances. *Felt v. Elmquist*, 104 Minn. 33, 35, 115 N.W. 746, 747 (1908); *Reed v. Board of Park Comm'rs*, 100 Minn. 167, 172, 110 N.W. 1119, 1120–21 (1907). The Restatement (Second) of Torts § 201 (1965), permits entry on private land to abate a nuisance:

(1) An entry on land in the possession of another by a possessor of neighboring land is privileged if the entry is made

(a) for the purpose of abating a structure or other condition on the land, which constitutes a private nuisance to the actor's possessory interest in the other land, and

(b) at a reasonable time and in a reasonable manner, and

(c) after the possessor upon demand has failed to abate the nuisance, or without such demand if the actor reasonably believes it to be impractical or useless.

(2) The privilege stated in Subsection (1) is also available to owners of easements and of non-possessory estates in land which are detrimentally affected by the nuisance.

The statutes defining nuisance, M.S.A. §§ 561.01 and 561.02, either provide the remedy available to the injured party or are followed by a remedial section, M.S.A. § 561.03.

**Research References**

*West's Key Number Digest*  
Nuisance ¶20, 54

*Legal Encyclopedias*  
C.J.S., Nuisances §§ 86, 143

SPECIAL VERDICT FORMS

CIVSVF 60.90

INTENTIONAL INFLICTION OF EMOTIONAL  
DISTRESS

1. Was (defendant's) conduct extreme and outrageous?

\_\_\_\_\_  
Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Did (defendant) intend to cause (plaintiff) severe emotional distress?

\_\_\_\_\_  
Yes or No

3. *If your answer to Question 2 was "Yes," then answer this question:* Did (plaintiff) suffer severe emotional distress?

\_\_\_\_\_  
Yes or No

4. *If your answer to Question 3 was "Yes," then answer this question:* Was (defendant's) conduct a direct cause of the emotional distress to (plaintiff)?

\_\_\_\_\_  
Yes or No

5. *If your answer to Question 4 was "Yes," then answer this question:* Did (plaintiff) exhibit physical symptoms that were directly caused by the emotional distress?

\_\_\_\_\_  
Yes or No

*[You must answer questions 6 and 7 regardless of your answers to any of the other questions on this Special Verdict Form.]*

6. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the emotional distress up to the time of this verdict for:

- |    |  |          |
|----|--|----------|
| a. | Past pain, disability and emotional distress | \$ _____ |
| b. | Past wage loss                               | \$ _____ |
| c. | Past healthcare expenses                     | \$ _____ |
| d. | Other past loss                              | \$ _____ |

7. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by the emotional distress for:

- |    |  |          |
|----|--|----------|
| a. | Future pain, disability and emotional distress | \$ _____ |
|----|--|----------|

- |    |                                 |          |
|----|---------------------------------|----------|
| b. | Loss of future earning capacity | \$ _____ |
| c. | Future healthcare expenses      | \$ _____ |
| d. | Other future loss               | \$ _____ |

---

### USE NOTE

The supreme court has repeatedly emphasized that there is a high standard for intentional infliction of emotional distress claims. The court has typically required that the plaintiff prove that the emotional distress caused physical symptoms, and support that claim by expert testimony. Those requirements are thresholds that have to be considered before the intentional infliction of emotional distress claim is submitted to the jury.

The questions in this special verdict form correspond with the following jury instructions:

- 1–3. CIVJIG 60.75: Intentional Infliction of Emotional Distress.
- 4. CIVJIG 27.10: Direct Cause.
- 5. CIVJIG 60.75: Authorities.
- 6a. CIVJIG 91.10: Items of Personal Damage—Past Damage—Bodily and Mental Harm.
- 6b. CIVJIG 91.20: Items of Personal Damage—Past Damage—Loss of Earnings.
- 6c. CIVJIG 91.15: Items of Personal Damage—Past Damage—Medical Supplies.
- 7a. CIVJIG 91.25: Items of Personal Damage—Future Damage—Bodily Harm and Mental Harm.
- 7b. CIVJIG 91.35: Items of Personal Damage—Future Damage—Loss of Earning Capacity.
- 7c. CIVJIG 91.30: Items of Personal Damage—Future Damage—Medical Supplies, Hospital, and Medical Expense.

### AUTHORITIES

In *Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 870 (Minn. 2003), the supreme court held that in intentional infliction of emotional distress claims “[t]he appropriate method of proving the severity and causation of emotional distress is through medical testimony.” The court has also required proof of physical symptoms arising out of the emotional



distress. *Langeslag*, 664 N.W.2d at 869–70.

## CIVSVF 60.91

## CIVIL ASSAULT

1. Did (defendant) cause apprehension or fear of immediate harm or offensive contact with (plaintiff)?

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question: Did (defendant) intend to cause this apprehension or fear?*

---

Yes or No

[You must answer questions 3 and 4 regardless of your answers to any of the other questions on this Special Verdict Form.]

3. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the assault up to the time of this verdict for:

- |    |  |          |
|----|--|----------|
| a. | Past pain, disability and emotional distress | \$ _____ |
| b. | Past wage loss                               | \$ _____ |
| c. | Past healthcare expenses                     | \$ _____ |

4. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by the assault for:

- |    |  |          |
|----|--|----------|
| a. | Future pain, disability and emotional distress | \$ _____ |
| b. | Loss of future earning capacity                | \$ _____ |
| c. | Future healthcare expenses                     | \$ _____ |

---

USE NOTE

The questions in this special verdict form correspond with the following jury instructions:

1. CIVJIG 60.25: Civil—Assault—Definition.
- 2a. CIVJIG 60.35: Civil—Assault—Definition.
- 2b. CIVJIG 60.10: Intent.

- 3a. CIVJIG 91.10: Items of Personal Damage—Past Damage—Bodily and Mental Harm.
- 3b. CIVJIG 91.20: Items of Personal Damage—Past Damage—Loss of Earnings.
- 3c. CIVJIG 91.15: Items of Personal Damage—Past Damage—Medical Supplies.
- 4a. CIVJIG 91.25: Items of Personal Damage—Future Damage—Bodily Harm and Mental Harm.
- 4b. CIVJIG 91.35: Items of Personal Damage—Future Damage—Loss of Earning Capacity.
- 4c. CIVJIG 91.30: Items of Personal Damage—Future Damage—Medical Supplies, Hospital, and Medical Expense.

## CIVSVF 60.92

## BATTERY; SELF DEFENSE

1. Did (defendant) cause a harmful or offensive contact with (plaintiff) (or anything closely connected to (plaintiff))?

---

 Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Did (defendant) intend to cause this contact?

---

 Yes or No

3. *If your answer to Question 2 was "Yes," then answer this question:* Would a reasonable person in (defendant's) position have believed the contact necessary to protect (himself) (herself) under the circumstances?

---

 Yes or No

4. *If your answer to Question 3 was "Yes," then answer this question:* Was the force used by (defendant) reasonable under the circumstances?

---

 Yes or No

[If you answered "No" to question 4, then answer Questions 5 and 6.]

5. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the battery up to the time of this verdict for:
- a. Past pain, disability and emotional distress \$ \_\_\_\_\_
  - b. Past wage loss \$ \_\_\_\_\_
  - c. Past healthcare expenses \$ \_\_\_\_\_
6. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by the battery for:
- a. Future pain, disability and emotional distress \$ \_\_\_\_\_
  - b. Loss of future earning capacity \$ \_\_\_\_\_
  - c. Future healthcare expenses \$ \_\_\_\_\_



## USE NOTE

This special verdict form contains questions on battery and self defense. Other defenses such as defense of third persons (CIVJIG 60.36), of dwelling (CIVJIG 60.39), or consent (CIVJIG 60.15) could be substituted for or added to the defense of self defense.

The questions in this special verdict form correspond with the following jury instructions:

1. CIVJIG 60.25: Battery.

2. CIVJIG 60.25: Battery.

CIVJIG 60.10: Intentional Torts—Intent—Definition.

3. CIVJIG 60.30: Self Defense or CIVJIG 60.35: Self Defense—Force Threatening Death or Serious Harm.

4. CIVJIG 60.35: Self Defense.

5a. CIVJIG 91.10: Items of Personal Damage—Past Damage—Bodily and Mental Harm.

5b. CIVJIG 91.20: Items of Personal Damage—Past Damage—Loss of Earnings.

5c. CIVJIG 91.15: Items of Personal Damage—Past Damage—Medical Supplies.

6a. CIVJIG 91.25: Items of Personal Damage—Future Damage—Bodily Harm and Mental Harm.

6b. CIVJIG 91.35: Items of Personal Damage—Future Damage—Loss of Earning Capacity.

6c. CIVJIG 91.30: Items of Personal Damage—Future Damage—Medical Supplies, Hospital, and Medical Expense.

## CIVSVF 60.93

## CONVERSION

1. [Did (defendant) exercise control over (plaintiff's) (personal property) contrary to (plaintiff's) right to (personal property)?]

[Did (defendant) destroy or change (plaintiff's) (personal property)?]

[Did (defendant) deprive (plaintiff) of possession of (personal property) permanently or for an indefinite period of time?]

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* [Did (defendant) intentionally exercise control over (plaintiff's) (personal property) contrary to (plaintiff's) right to (personal property)?]

[Did (defendant) intentionally destroy or change (plaintiff's) (personal property)?]

[Did (defendant) intentionally deprive (plaintiff) of possession of (personal property) permanently or for an indefinite period of time?]

---

Yes or No

*If you answered "Yes" to Question 2, then answer Question 3.*

3. What was the value of (plaintiff's) (personal property) at the time (defendant) [exercised control over (plaintiff's) (personal property)] [destroyed or changed (plaintiff's) (personal property)] [deprived (plaintiff) of (plaintiff's) (personal property) permanently or for an indefinite period of time]?

\$ \_\_\_\_\_

---

USE NOTE

This special verdict form is intended for use in cases involving conversion claims.

The questions in this special verdict form correspond with the following jury instructions:

1. CIVJIG 60.65: Conversion.
2. CIVJIG 60.10: Intent.

### AUTHORITIES

The measure of damages in a conversion case is generally the value of the property at the time the property is converted, plus interest. *McLeod Nash Motors, Inc. v. Commercial Credit Trust*, 187 Minn. 452, 460, 246 N.W. 17, 20 (1932); *Bates v. Armstrong*, 603 N.W.2d 679, 682 (Minn. Ct. App. 2000); *Fawcett v. Heimbach*, 591 N.W.2d 516, 518 (Minn. Ct. App. 1999).

## CIVSVF 60.94

## FALSE IMPRISONMENT

1. Was (plaintiff's) physical liberty restricted?

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question: Did (defendant) intentionally restrict (plaintiff's) physical liberty?*

---

Yes or No

[You must answer questions 3 and 4 regardless of your answers to any of the other questions on this Special Verdict Form.]

3. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the battery up to the time of this verdict for:
- |    |  |          |
|----|--|----------|
| a. | Past pain, disability and emotional distress | \$ _____ |
| b. | Past wage loss                               | \$ _____ |
| c. | Past healthcare expenses                     | \$ _____ |
4. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by the battery for:
- |    |  |          |
|----|--|----------|
| a. | Future pain, disability and emotional distress | \$ _____ |
| b. | Loss of future earning capacity                | \$ _____ |
| c. | Future healthcare expenses                     | \$ _____ |

---

USE NOTE

The questions in this special verdict form correspond with the following jury instructions:

1. CIVJIG 60.70: False Imprisonment.
- 2a. CIVJIG 60.70: False Imprisonment.
- 2b. CIVJIG 60.10: Intentional Torts—Intent—Definition.
- 3a. CIVJIG 91.10: Items of Personal Damage—Past Damage—Bodily and Mental Harm.



- 3b. CIVJIG 91.20: Items of Personal Damage—Past Damage—  
Loss of Earnings.
- 3c. CIVJIG 91.15: Items of Personal Damage—Past Damage—  
Medical Supplies.
- 4a. CIVJIG 91.25: Items of Personal Damage—Future Dam-  
age—Bodily Harm and Mental Harm.
- 4b. CIVJIG 91.35: Items of Personal Damage—Future Dam-  
age—Loss of Earning Capacity.
- 4c. CIVJIG 91.30: Items of Personal Damage—Future Dam-  
age—Medical Supplies, Hospital, and Medical Expense.

## CIVSVF 60.95

## NUISANCE

1. Did (defendant) create a nuisance that affected the property?  

---

Yes or No
2. *If your answer to Question 1 was "Yes," then answer this question:* Did (defendant) intentionally create the nuisance?  

---

Yes or No
3. *If your answer to Question 2 was "No," then answer this question:* Did (defendant) negligently interfere with this comfortable enjoyment of life or property?  

---

Yes or No
4. *If your answer to either Question 2 or 3 was "Yes," then answer this question:* Was this interference a direct cause of (plaintiff's) damages?  

---

Yes or No
5. *If your answer to Question 5 was "Yes," then answer this question:* What amount of money will fairly and adequately compensate (plaintiff) for the damages that were directly caused by the nuisance?  

---

Yes or No

---

USE NOTE

The questions in this special verdict form correspond with the following jury instructions:

1. CIVJIG 60.80: Private Nuisance—Definition.
2. CIVJIG 60.80: Private Nuisance—Definition.
3. CIVJIG 60.80: Private Nuisance—Definition.
4. CIVJIG 27.10: Direct Cause.
5. CIVJIG 90.10: Compensatory Damages—Personal and Property Damages—General Instruction.

## CATEGORY 65

### MOTOR VEHICLES

---

#### *Table of Instructions*

CIVJIG 65.10	Negligence—Common Law Duties—Driver—Pedestrian
CIVJIG 65.15	Duty of Motor Vehicle Passenger—General
CIVJIG 65.20	Affirmative Duty of Motor Vehicle Passenger—Limited
CIVJIG 65.25	Violation of Traffic Statute
CIVJIG 65.30	Traffic Statutes—Terms—Definitions
CIVJIG 65.35	Motor Vehicle—Skidding Alone
CIVJIG 65.40	No-Fault Automobile Insurance—Tort Thresholds

#### SPECIAL VERDICT FORMS

CIVSVF 65.90	No-Fault Automobile Insurance
CIVSVF 65.91	Underinsured Motorist Insurance
CIVSVF 65.92	Uninsured Motorist Insurance

---

#### INTRODUCTORY NOTE

In general, drivers, passengers, and pedestrians have a duty to exercise reasonable care. This category collects cases in which either the supreme court or the legislature has applied special rules in cases involving automobile accidents.

The rule that evidence of skidding is not in itself evidence of negligence, unless the skidding could have been prevented by the use of reasonable care, *Byrns v. St. Louis County*, 295 N.W.2d 517, 519–20 (Minn. 1980), is a particularized application of the rule that a person must exercise reasonable care under all the circumstances. The same is true of the more specific statement of the rules requiring drivers and pedestrians to use reasonable care in using public highways, *e.g.*, *Coble v. Lacey*, 252 Minn. 423, 429–30, 90 N.W.2d 314, 320–21 (1958), and the duty of a driver to keep a proper lookout and to keep his or her vehicle under control at all times. *E.g.*, *Van Tassel v. Hillerns*, 311 Minn. 252, 255, 248 N.W.2d 313, 315 (1976).

The obligation of a passenger in a motor vehicle to exercise reasonable care does not extend to an obligation to take measures for his or

her own safety, except in the unusual case where the driver is unaware of a danger known to the passenger, and a warning might have avoided the danger. *E.g.*, *Miller v. Hughes*, 259 Minn. 53, 61, 105 N.W.2d 693, 696 (1960).

While the usual rule is that a statutory violation is negligence *per se*, violation of a traffic statute in Minnesota establishes prima facie negligence. M.S.A. § 169.96(b). Proof of the violation shifts to the person violating the statute the burden of introducing evidence showing that the violation was reasonable under the circumstances. *Marshall v. Galvez*, 480 N.W.2d 358, 361 (Minn. Ct. App. 1992). If evidence of excuse or justification is introduced, the issue of whether the violator was negligent is a jury issue. *Gertken v. Farmers Elevator of Kensington, Minn., Inc.*, 411 N.W.2d 550, 554 (Minn. Ct. App. 1987), rev. denied (Minn. Oct. 28, 1987). If a traffic statute is violated, but is not in any way rebutted, violation is negligence as a matter of law. *Riley v. Lake*, 295 Minn. 43, 53, 203 N.W.2d 331, 338 (Minn. 1972).



**CIVJIG 65.10****NEGLIGENCE—COMMON LAW DUTIES—DRIVER—  
PEDESTRIAN****Duties of highway users**

The violation of the duty to use reasonable care is negligence. The duty of reasonable care includes these duties:

1. Drivers and pedestrians must keep a reasonable lookout.
2. A driver must keep his or her vehicle under reasonable control.
3. [Other applicable non-statutory duties].

Whether any of these duties was violated depends on:

1. The risks of the situation;
2. Dangers that were known or could have been anticipated;
3. All the existing circumstances.

---

**USE NOTE**

In the typical automobile negligence action, the duty to maintain a reasonable lookout (1) and the duty to maintain reasonable control (2) will be given. This instruction combines the basic negligence instruction, CIVJIG 25.10, with those duties, in a single instruction.

See CIVJIG 25.45 for statutory duties other than those based on traffic statutes.

See CIVJIG 65.25 for traffic statute violations.

**AUTHORITIES**

Motorists, pedestrians, and all other users of the highways have a general duty to exercise reasonable care. See *Coble v. Lacey*, 252 Minn.

423, 90 N.W.2d 314 (1958); *Schubitzke v. Minneapolis, St. Paul & Sault Ste. Marie R. R. Co.*, 244 Minn. 156, 69 N.W.2d 104 (1955); *Swanson v. Carlson*, 231 Minn. 373, 43 N.W.2d 217 (1950); *Peterson v. Minneapolis St. Ry. Co.*, 226 Minn. 27, 31 N.W.2d 905 (1948); *Rusciano v. State Farm Mutual Automobile Ins. Co.*, 445 N.W.2d 271, 273 (Minn. Ct. App. 1989). The duties imposed by the Highway Traffic Regulation Act do not supersede this common law duty, except as specifically provided. *Kolatz v. Kelly*, 244 Minn. 163, 173–74, 69 N.W.2d 649, 656–57 (1955); *Carlson v. Peterson*, 205 Minn. 20, 23, 284 N.W. 847, 848 (1939). Included as a part of the duty of reasonable care are the duties to maintain a proper lookout and to keep the vehicle under reasonable control. See *Van Tassel v. Hillerns*, 311 Minn. 252, 255, 248 N.W.2d 313, 315 (1976); *Gross v. Hoag*, 251 Minn. 217, 223, 87 N.W.2d 542, 546 (1958); *Schubitzke v. Minneapolis, St. Paul & Sault Ste. Marie R.R. Co.*, 244 Minn. 156, 161, 69 N.W.2d 104, 107 (1955); *Wilmes v. Mihelich*, 223 Minn. 139, 145, 25 N.W.2d 833, 836 (1947).

### Research References

#### *West's Key Number Digest*

Automobiles ☞146, 150, 160, 246(2)

#### *Legal Encyclopedias*

C.J.S., Motor Vehicles §§ 18, 41, 500 to 503, 506 to 510, 545 to 546, 550 to 552, 554 to 555, 568 to 577, 770 to 771, 775, 778 to 784, 1257 to 1258, 1266 to 1269, 1271 to 1274, 1299 to 1300

## CIVJIG 65.15

**DUTY OF MOTOR VEHICLE PASSENGER—  
GENERAL****Duty of a passenger**

A passenger in a motor vehicle has a duty to use the care a reasonable passenger would use in similar circumstances.

---

**USE NOTE**

This instruction is simply a specific application of the general rule obligating a person to exercise reasonable care for his or her own safety. CIVJIG 65.20 covers the obligation of a passenger to take affirmative steps for his or her own safety, but only under limited circumstances.

**AUTHORITIES**

The standard of care required of a passenger in a vehicle is that care which would be exercised by an ordinarily prudent passenger. *Hanson v. Bailey*, 249 Minn. 495, 503–04, 83 N.W.2d 252, 259 (1957); *Kokesh v. Price*, 136 Minn. 304, 308, 161 N.W. 715, 717 (1917). It is the duty of the passenger to exercise reasonable care for his own safety. *Tatro v. Carlson*, 271 Minn. 536, 543, 137 N.W.2d 187, 192; *Hubenette v. Ostby*, 213 Minn. 349, 352, 6 N.W.2d 637, 639 (1942); *Thompson v. Hill*, 366 N.W.2d 628, 631 (Minn. Ct. App. 1985). A passenger must do the things necessary to assure his safety that an ordinarily prudent person would do under the same or similar circumstances. *Hubenette*, 213 Minn. at 352, 6 N.W.2d at 639. A passenger who interferes with the operation of a motor vehicle may be negligent. 213 Minn. at 352, 6 N.W.2d 637, 6 N.W.2d at 639; *Lind v. Slowinski*, 450 N.W.2d 353, 357 (Minn. App. 1990), rev. denied (Minn. Feb. 21, 1990).

If the passenger is contributorily negligent, the passenger's recovery is subject to the Comparative Fault Act, M.S.A. § 604.01. See *Springrose v. Willmore*, 292 Minn. 23, 28, 192 N.W.2d 826, 829 (1971).

**Research References**

*West's Key Number Digest*  
Automobiles ⇨224(1), 246(36)

*Legal Encyclopedias*  
C.J.S., Motor Vehicles §§ 880 to 881, 937 to 944, 1257, 1269, 1300

## CIVJIG 65.20

**AFFIRMATIVE DUTY OF MOTOR VEHICLE  
PASSENGER—LIMITED****Duty of passenger to protect self**

A passenger has a duty to use reasonable care to protect him or herself when:

1. It is apparent that the driver cannot do so, and
2. The passenger's action can prevent the harm.

---

**USE NOTE**

This instruction is intended for use in cases where the claim is that the passenger owed a duty to take affirmative steps for his or her own safety. It should be given only where the evidence justifies a finding that the driver was unable to protect the passenger, and the passenger's actions could have prevented the harm.

**AUTHORITIES**

A passenger is under no duty to assume responsibility for the management of the vehicle. See *Miller v. Hughes*, 259 Minn. 53, 61, 105 N.W.2d 693, 699 (1960); *Hanson v. Bailey*, 249 Minn. 495, 503–04, 83 N.W.2d 252, 259 (1957). Nor is a passenger under an affirmative duty to take measures to preserve his own safety, except under unusual circumstances, as where he has acquired knowledge of the incompetence or carelessness of the driver, or where he discovers a hazard of which he is aware that the driver is oblivious. See *Burdick v. Bongard*, 256 Minn. 24, 29–30, 96 N.W.2d 868, 873 (1959); *Rutz v. Iacono*, 229 Minn. 591, 594, 40 N.W.2d 892, 895 (1949); *Burgess v. Crafts*, 184 Minn. 384, 386, 238 N.W. 798, 799 (1931). Even when the passenger discovers some hazard of which he fails to warn the driver, he is not chargeable with negligence, unless he had reason to believe that the driver was not aware of the danger, and there is also evidence that his warning might have averted the accident. See *Miller v. Hughes*, 259 Minn. 53, 61, 105 N.W.2d 693, 699 (1960); *Burdick v. Bongard*, 256 Minn. 24, 29–30, 96 N.W.2d 868, 873 (1959); *Rutz v. Iacono*, 229 Minn. 591, 594, 40 N.W.2d 892, 895 (1949).

A passenger does not have a duty to be constantly on the alert to discover dangers the driver may not discover. See *Hanson v. Bailey*, 249 Minn. 495, 503, 83 N.W.2d 252, 259 (1957); *Burgess v. Crafts*, 184 Minn. 384, 386, 238 N.W. 798, 799 (1931). Thus, a passenger who goes to sleep



is not negligent, unless there are peculiar circumstances that would make a reasonable person aware of the necessity to stay awake and remain alert for his own safety. *Sackett v. Haeckel*, 249 Minn. 290, 297, 81 N.W.2d 833, 837 (1957).

The jury instruction incorporating these standards has been expressly approved by the Minnesota Supreme Court. *See Young v. Wlazik*, 262 N.W.2d 300, 307 (Minn. 1977), overruled on other grounds, *Perkins v. National R.R. Passenger Corp.*, 289 N.W.2d 462 (Minn. 1979).

In *Olson v. Ische*, 343 N.W.2d 284, 288 (Minn. 1984), the Minnesota Supreme Court held that a passenger has no duty to third persons to control an intoxicated driver, in absence of a special relationship to the driver.

#### Research References

*West's Key Number Digest*  
Automobiles ⇨224(5), 246(36)

*Legal Encyclopedias*  
C.J.S., Motor Vehicles §§ 880 to 881, 937 to 944, 947 to 953, 1257, 1269, 1300

**CIVJIG 65.25****VIOLATION OF TRAFFIC STATUTE****Duties from traffic laws**

Besides the duties I have already read to you, drivers and pedestrians have additional duties.

These additional duties are in traffic laws passed by the legislature. I will read some of those traffic laws to you. The fact that I read a law to you does not mean it was violated.

You must decide if any of these traffic laws were violated, based on the evidence.

[Read the applicable statutes.]

**Effect of a traffic law violation**

Violation of a traffic law is negligence, [unless there is evidence tending to show:

- a. The person had a reasonable excuse or justification for breaking the law, or
- b. A reasonable person could believe, under the circumstances, that violating this law would not endanger anyone who should be protected by the law.

If a person offers an excuse or justification for breaking the law, you can still find that person negligent.]

In deciding negligence, consider the violation along with all the other evidence in the case.

**[The violation as a cause of the accident**

If a traffic law was violated, you must also decide if this violation was a direct cause of the accident.]

## USE NOTE

See CIVJIG 65.30 for an instruction explaining certain terms used in the traffic statutes.

If there is no evidence of excuse or justification, the bracketed language in the 'Effect of a traffic law violation' section should not be given. The jury must be instructed that violation of the statute is negligence.

## AUTHORITIES

M.S.A. § 169.96 (b) provides that "(i)n all civil actions, a violation of any of the provisions of this chapter, by either or any of the parties to such action or actions shall not be negligence *per se* but shall be prima facie evidence of negligence only." See *Janssen v. Neal*, 256 N.W.2d 292, 294 (Minn. 1977); *Kirsebom v. Connelly*, 486 N.W.2d 172, 174 (Minn. Ct. App. 1992). Where there is no evidence of excuse or justification, the court should hold the violator negligent as a matter of law. *Simchuck v. Fullerton*, 299 Minn. 91, 99, 216 N.W.2d 683, 688 (1974); *Riley v. Lake*, 295 Minn. 43, 53, 203 N.W.2d 331, 338 (1972); *Krafft v. Hirt*, 260 Minn. 296, 300-01, 110 N.W.2d 14, 17-18 (1961).

The proposed instruction is based on the following language of the court in *Borris v. Cox*, 245 Minn. 515, 73 N.W.2d 372 (1955):

Under these principles the violator of a highway traffic regulation may overcome the prima facie case against him by submitting evidence (1) to establish that there was reasonable excuse or justification for such violation; or (2) which would justify a reasonable assumption that under the circumstances present such violation was not negligent and therefore would not reasonably endanger him or any other person entitled to the protection of the act involved.

245 Minn. at 518, 73 N.W.2d at 374. See also *Janssen v. Neal*, 256 N.W.2d 292, 294 (Minn. 1977); *Tomforde v. Newman*, 309 Minn. 254, 256-57, 244 N.W.2d 47, 48-49 (1976); *Konkel v. Erdman*, 254 Minn. 307, 313-14, 95 N.W.2d 73, 77 (1959); *Clifford v. Peterson*, 276 Minn. 142, 144-45, 149 N.W.2d 75, 77 (1967); *Freude v. Berzins*, 379 N.W.2d 174, 176 (Minn. Ct. App. 1985). The burden of producing evidence is upon the violator. See *Krafft v. Hirt*, 260 Minn. 296, 300-01, 110 N.W.2d 14, 17-18 (1961); *Borris v. Cox*, 245 Minn. 515, 73 N.W.2d 372 (1955). The burden is only that of going forward with the evidence, as distinguished from the burden of persuasion. The burden of proving negligence remains upon the party asserting that claim. *Holten v. Parker*, 302 Minn. 167, 176, 224 N.W.2d 139, 145 (1974); *Peterson v. Minneapolis St. Ry. Co.*, 226 Minn. 27, 31 N.W.2d 905 (1948); *Olson v. Duluth, M. & I. R. Ry. Co.*, 213 Minn. 106, 5 N.W.2d 492 (1942).

Violation of a maximum speed limit inside a municipality is negligence *per se*, and violation of a maximum speed limit outside the

municipality is only prima facie negligence. See *Duck v. Modern Roadways, Inc.*, 253 N.W.2d 822, 825 (Minn. 1977); *Butler v. Engel*, 243 Minn. 317, 68 N.W.2d 226 (1954).

**Research References**

*West's Key Number Digest*

Automobiles ☞ 147, 160, 246(14)

*Legal Encyclopedias*

C.J.S., Motor Vehicles §§ 504 to 505, 508, 547 to 550, 552, 569 to 577, 770 to 771, 775, 778 to 784, 1257, 1262, 1300



**CIVJIG 65.30****TRAFFIC STATUTES—TERMS—DEFINITIONS**

**“At approximately the same time” [M.S.A. § 169.20, subd. 1]**

“At approximately the same time” means that the time is so close that a collision is likely if the vehicles continue at the same speed and direction.

**“Immediate hazard” [M.S.A. § 169.20, subd. 2 and/or subd. 3]**

“Immediate hazard” means that the vehicle is so close that a collision is likely if the vehicles continue at the same speed and direction.

**“Approaching so closely on the through highway as to constitute immediate hazard” [M.S.A. § 169.20, subd. 3 and/or subds. 2 and 4]**

“Approaching so closely on the through highway as to constitute immediate hazard” means that the vehicle is so close that a collision is likely if the vehicles continue at the same speed and direction.

**“Approaching” [M.S.A. § 169.20, subd. 4 and/or 3]**

“Approaching” means that the vehicle is so close that a collision is likely if the vehicles continue at the same speed and direction.

**“Immediate approach” [M.S.A. § 169.20, subd. 5]**

“Immediate approach” means that the vehicle is so close that a collision is likely if the vehicles continue at the same speed and direction.

---

**USE NOTE**

These instructions define specific terms in M.S.A. § 169.20. The instructions are optional. If used, the instructions should be given im-

mediately following the relevant parts of M.S.A. § 169.20 in CIVJIG 65.25.

### **AUTHORITIES**

These definitions apply in cases where there is a violation of M.S.A. § 169.20, which reads in pertinent part as follows:

Subdivision 1. Approaching intersection. (a) When two vehicles enter an uncontrolled intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(b) When two vehicles enter an intersection controlled by stop signs or by blinking red traffic signals requiring drivers or vehicles from any direction to stop before proceeding, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(c) At an uncontrolled approach to a T-shaped intersection, the driver required to turn shall yield to the cross traffic.

(d) The driver of any vehicle traveling at an unlawful speed shall forfeit any right-of-way which the driver might otherwise have hereunder.

(e) The foregoing rules are modified as hereinafter stated in this section.

Subd. 2. Left turn. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

Subd. 3. Through highway; stop sign. (a) The driver of a vehicle shall stop as required by this chapter at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from the through highway or which are approaching so closely on the through highway as to constitute an immediate hazard, but the driver having so yielded may proceed, and the drivers of all other vehicles approaching the intersection on the through highway shall yield the right-of-way to the vehicles so proceeding into or across the through highway.

(b) The driver of a vehicle shall likewise stop in obedience to a stop sign, as required herein, at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway, and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

Subd. 4. Vehicle entering roadway. The driver of a vehicle about to

enter or cross a roadway from any place other than a roadway shall yield the right-of-way to all vehicles approaching on the roadway to be entered or crossed.

Subd. 5. Emergency vehicle; penalties. (a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle and, except as otherwise provided in paragraph (b), when the driver is giving audible signal by siren, the driver of each other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway clear of any intersection, and shall stop and remain in this position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. The driver of another vehicle on a one-way roadway shall drive to the closest edge or curb and stop.

(b) The driver of an authorized emergency vehicle escorting the movement of an oversize or overweight vehicle or load need not sound an audible signal by siren but shall exhibit the light required by paragraph (a). The driver of each other vehicle then shall yield the right-of-way, as required by paragraph (a), to the emergency vehicle escorting the oversize or overweight vehicle or load.

(c) Upon the approach of an authorized emergency vehicle the driver of each streetcar shall immediately stop the car clear of any intersection and keep it in this position and keep the doors and gates of the streetcar closed until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(d) This subdivision does not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the highways.

(e) A driver who fails to comply with paragraph (a), (b), or (c) is guilty of a petty misdemeanor and may be penalized according to section 169.89.

(f) A driver who intentionally obstructs an emergency vehicle or otherwise intentionally fails to comply with paragraph (a), (b), or (c) is guilty of a misdemeanor.

**1. M.S.A. § 169.20, subd. 1.** The words “at approximately the same time” mean “the approach to an intersection of two vehicles so nearly at the same time that there would be imminent hazard of a collision if both continued the same course at the same speed.” *Ballweber v. Kleist*, 248 Minn. 102, 110–11, 78 N.W.2d 671, 676 (1956); *see also Peterson v. Lang*, 239 Minn. 319, 324, 58 N.W.2d 609, 612–13 (1953); *Moore v. Kujath*, 225 Minn. 107, 112, 29 N.W.2d 883, 886 (1947). The “reasonable likelihood or danger of a collision” test used in construing the word “approaching” for the purposes of M.S.A. § 169.20, subd. 4, may be used



interchangeably with the “imminent hazard test.” *Peterson v. Lang*, 239 Minn. 319, 58 N.W.2d 609 (1953). Furthermore, “immediate hazard” may be substituted for “imminent hazard.” 239 Minn. at 319, 58 N.W.2d at 609.

The “right of way” rule does not excuse the driver from exercising due care commensurate with the conditions existing as the driver approaches the intersection. *Simchuck v. Fullerton*, 299 Minn. 91, 98, 216 N.W.2d 683, 689 (1974); *Jablinske v. Eckstrom*, 247 Minn. 140, 144, 76 N.W.2d 654, 657 (1956); *Webber v. Seymour*, 236 Minn. 10, 20, 51 N.W.2d 825, 831 (1952). The “right of way” rule does not apply to a standing or non-moving vehicle. *Trebnick v. Gordon*, 259 Minn. 164, 165–66, 106 N.W.2d 622, 623 (1960); *Wright v. Minneapolis St. Ry. Co.*, 222 Minn. 105, 110, 23 N.W.2d 347, 352 (1946). A driver traveling at an unlawful speed forfeits any right of way he or she may have had. *See Eklund v. Lund*, 301 Minn. 359, 364, 222 N.W.2d 348, 351 (1974). A driver approaching an intersection with a yield sign at an unlawful rate of speed forfeits any right of way he or she might have had. *See Cooper v. Friesen*, 296 Minn. 160, 164, 207 N.W.2d 742, 745 (1973).

**2. M.S.A. § 169.20, subd. 2.** The phrase “immediate hazard” means a reasonable likelihood or danger of a collision. *See Peterson v. Lang*, 239 Minn. 319, 58 N.W.2d 609 (1953).

**3. M.S.A. § 169.20, subds. 4, 5.** The words “approaching” or “immediate approach” mean reasonable likelihood or danger of a collision. *Peterson v. Lang*, 239 Minn. 319, 324, 58 N.W.2d 609, 612–13 (1953).

The provision in M.S.A. § 169.20, subd. 1, that the driver of a vehicle traveling at an unlawful speed forfeits the right of way that he might otherwise have, is held applicable to violations of all subdivisions of M.S.A. § 169.20. *Anderson v. Mid-Motors, Inc.*, 256 Minn. 157, 161, 98 N.W.2d 188, 191 (1959).

### Research References

*West's Key Number Digest*  
Automobiles ⇨167(3), 171(4.1), 246(9)

*Legal Encyclopedias*  
C.J.S., Motor Vehicles §§ 684 to 692, 729 to 739, 741 to 742, 744 to 746, 748 to 749, 1257, 1269, 1273, 1300



## CIVJIG 65.35

## MOTOR VEHICLE—SKIDDING ALONE

## Skidding

Skidding by itself is not evidence of negligence.

Skidding is evidence of negligence if it could have been prevented by the exercise of reasonable care.

---

USE NOTE

This instruction should be given where supported by the evidence. Skidding alone is not evidence of negligence. However, it is evidence of negligence if the skidding could have been prevented by the exercise of reasonable care.

## AUTHORITIES

The mere fact of skidding by a motor vehicle does not of itself establish or prove negligence on the part of the driver, unless the skidding could have been prevented by the exercise of reasonable care. *Byrns v. St. Louis County*, 295 N.W.2d 517, 520 (Minn. 1980); *Benson v. Dunham*, 286 Minn. 152, 174 N.W.2d 687 (1970); *Tanski v. Jackson*, 269 Minn. 304, 308, 130 N.W.2d 492, 495 (1964); *Oldendorf v. Eide*, 260 Minn. 458, 463, 110 N.W.2d 310, 313-14 (1961); *Hammond v. Minneapolis St. Ry. Co.*, 257 Minn. 330, 332, 101 N.W.2d 441, 443 (1960); *Yurkew v. Taylor*, 252 Minn. 277, 281-82, 89 N.W.2d 723, 726 (1958); *Svercl v. Jamison*, 252 Minn. 8, 9, 88 N.W.2d 839, 841 (1958); *Cohen v. Hirsch*, 230 Minn. 512, 517, 42 N.W.2d 51, 53 (1950); *Marshall v. Galvez*, 480 N.W.2d 358, 360 (Minn. Ct. App. 1992). "A driver may unavoidably lose control of his vehicle for a number of reasons other than negligence. It is a jury question whether, under the circumstances, respondent's actions constituted negligence." 480 N.W.2d at 360, citing *Tuckner v. Chouinard*, 407 N.W.2d 723, 726 (Minn. Ct. App. 1987) (deer darting into traffic).

Failure of the trial judge to give a requested instruction on skidding constitutes error when there is evidence to support that theory. See *Oldendorf v. Eide*, 260 Minn. 458, 463-64, 110 N.W.2d 310, 313-14 (1961); *Hammond v. Minneapolis St. Ry. Co.*, 257 Minn. 330, 333, 101 N.W.2d 441, 443 (1960).

## Research References

*West's Key Number Digest*  
Automobiles ⇨ 168, 242(2), 242(4), 246(20)

*Legal Encyclopedias*

C.J.S., Motor Vehicles §§ 578 to 588, 590 to 599, 625, 629 to 630, 643 to 649, 651 to 652, 719 to 721, 1025, 1035 to 1041, 1043, 1257, 1279, 1298, 1300 to 1310

**CIVJIG 65.40****NO-FAULT AUTOMOBILE INSURANCE—TORT THRESHOLDS****“Disfigurement”**

A “disfigurement” is that which impairs or injures the appearance of a person.

**“Permanent Injury”**

A “permanent injury” is one from which it is reasonably certain a person will not fully recover. The injury may improve or worsen, but must be reasonably certain to continue to some degree throughout the person’s life.

**“Sixty-Day Disability”**

“Disability” means that an injured person is unable to engage in substantially all of his or her usual and customary daily activities, for 60 days or more. Sixty days does not mean 60 consecutive days. It is sufficient if the total number of days of disability was 60 or more.

---

**USE NOTE**

This instruction is intended for use in cases where there are fact issues as to whether the descriptive tort thresholds in M.S.A. § 65B.51, subd. 3(b), are in issue. In cases where the medical expense threshold in M.S.A. § 65B.51, subd. 3(a), is in issue, there should be a separate question on the special verdict form asking for an assessment of the reasonable medical expenses the plaintiff has paid, or that are payable. The damages instructions on past medical expenses should ordinarily be sufficient on the issue. *See* CIVJIG 91.15.

**AUTHORITIES**

The Minnesota No-Fault Automobile Insurance Act imposes certain limitations on the right to recover damages in a tort action. These limitations, or tort thresholds, apply only to actions for “noneconomic detriment,” defined by the Act as “all dignitary losses suffered by any person as a result of injury arising out of the ownership, maintenance, or use of a motor vehicle, including pain and suffering, loss of consortium, and

inconvenience.” M.S.A. § 65B.43, subd. 9. The tort thresholds are not jurisdictional requirements, *Murray v. Walter*, 269 N.W.2d 47, 50 (Minn. 1978), but are limitations on the right to recover damages for noneconomic detriment *Nemanic v. Gopher Heating and Sheet Metal, Inc.*, 337 N.W.2d 667, 669 (Minn. 1983). The tort thresholds are not affirmative defenses but are part of the plaintiff’s case. See 337 N.W.2d at 669; *Murray v. Walter*, 269 N.W.2d 47, 50 (Minn. 1978); *Lindner v. Lund*, 352 N.W.2d 68, 70 (Minn. Ct. App. 1984).

M.S.A. § 65B.51, subd. 3, contains the tort thresholds. The tort thresholds apply to actions described in subdivision 1 of section 65B.51. Subdivision 1 applies to “a cause of action in negligence accruing as a result of injury arising out of the operation, ownership, maintenance or use of a motor vehicle with respect to which security has been provided as required by sections 65B.41 to 65B.71 \* \* \* .” Thus, in actions against defendants whose negligence did not arise out of the operation, ownership, maintenance, or use of a motor vehicle, or where the action is based on a theory other than negligence, the tort thresholds are inapplicable. This is made explicit in subdivisions 4 and 5 of section 65B.51:

**Subd. 4.** Nothing in this section shall impair or limit the liability of a person in the business of manufacturing, distributing, retailing, repairing, servicing, or maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in manufacture, inspection, repair, servicing or maintenance of a vehicle in the course of his business.

**Subd. 5.** Nothing in this section shall impair or limit tort liability or limit liability or limit the damages recoverable from any person for negligent acts or omissions other than those committed in the operation, ownership, maintenance or use of a motor vehicle.

In actions covered by section 65B.51, subd. 1, subdivision 3 provides that in such actions:

[N]o person shall recover damages for noneconomic detriment unless:

(a) The sum of the following exceeds \$4,000:

(1) Reasonable medical expense benefits paid, payable or payable but for any applicable deductible, plus

(2) The value of free medical or surgical care or ordinary and necessary nursing services performed by a relative of the injured person or a member of his household, plus

(3) The amount by which the value of reimbursable medical services or products exceeds the amount of benefit



paid, payable, or payable but for an applicable deductible for those services or products if the injured person was charged less in this state for similar services or products, minus

(4) The amount of medical expense benefits paid, payable, or payable but for an applicable deductible for diagnostic x-rays and for a procedure or treatment for rehabilitation and not for remedial purposes or a course of rehabilitative occupational training; or

(b) The injury results in:

(1) permanent disfigurement;

(2) permanent injury;

(3) death; or

(4) disability for 60 days or more.

The medical expense threshold computation must be based on expenses that have been paid or are payable at the time of trial. Future medical expenses may not be considered. *See Coughlin v. LaBounty*, 354 N.W.2d 48, 52 (Minn. Ct. App. 1984).

There are no appellate decisions yet construing the terms “permanent disfigurement” or “permanent injury.” Different definitions of “disfigurement” are available. Disfigurement has been defined as “that which impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner.” The definition has been used in various legal contexts. *See Allison v. State*, 157 Ind.App. 277, 280, 299 N.E.2d 618, 621 (1973) (criminal law definition in aggravated assault and battery statute); *Smith v. Higgins*, 819 S.W.2d 710, 711 (Ky.1991) (no-fault); *Falcone v. Branker*, 135 N.J.Super. 137, 147, 342 A.2d 875, 879 (1975); *St. Laurent v. Kaiser Aluminum & Chem. Corp.*, 113 R.I. 10, 13, 316 A.2d 504, 506 (1974) (workers compensation). Disfigurement has also been defined as an “observable impairment of the natural appearance of a person.” *Arkin v. Industrial Comm’n*, 145 Colo. 463, 472, 358 P.2d 879, 884 (1961).

Although there is no clear definition of the term “permanent injury,” the Minnesota cases establish that a permanent injury is one that will continue for the remainder of the plaintiff’s life. *See 2 Wm. Mitchell L.Rev.* 109; 145–47 & nn. 181–182.

Section 65B.51, subd. 3(c), states that “[f]or the purposes of this subdivision disability means the inability to engage in substantially all of the injured persons usual and customary daily activities.” The dis-

ability must be for 60 days. The 60-day requirement means 60 cumulative, rather than 60 consecutive days of disability. *Lindner v. Lund*, 352 N.W.2d 68, 71 (Minn. Ct. App. 1984).

Tort threshold issues are usually questions of fact for the jury. *E.g.*, *Nemanic v. Gopher Heating and Sheet Metal, Inc.*, 337 N.W.2d 667, 670 (Minn. 1983); *Lindner v. Lund*, 352 N.W.2d 68, 71 (Minn. Ct. App. 1984); *cf. Marose v. Hennameyer*, 347 N.W.2d 509 (Minn. Ct. App. 1984).

#### Research References

*West's Key Number Digest*  
Automobiles ☞ 251.11 to 251.19

## SPECIAL VERDICT FORMS

## CIVSVF 65.90

## NO-FAULT AUTOMOBILE INSURANCE

1. Was (defendant) negligent in the operation of the vehicle (he) (she) was driving at the time of the accident?

\_\_\_\_\_  
Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Was (defendant)'s negligence a direct cause of the accident?

\_\_\_\_\_  
Yes or No

3. Was (plaintiff) negligent in the operation of the vehicle (he) (she) was driving at the time of the accident?

\_\_\_\_\_  
Yes or No

4. *If your answer to Question 3 was "Yes," then answer this question:* Was (plaintiff)'s negligence a direct cause of the accident?

\_\_\_\_\_  
Yes or No

[If your answers to Questions 2 and 4 were "Yes," then answer Question 5.]

5. Taking all of the fault that contributed as a direct cause of the accident to be 100%, what percentage do you attribute to:

(defendant) \_\_\_\_\_%

(plaintiff) \_\_\_\_\_%

TOTAL 100%

6. Did (plaintiff) sustain a permanent disfigurement as a result of the accident?

\_\_\_\_\_  
Yes or No

7. Did (plaintiff) sustain a permanent injury as a result of the accident?

\_\_\_\_\_  
Yes or No

8. Did (plaintiff) sustain a 60 day disability as a result of the accident?

---

Yes or No

[You must answer Question 9 and Question 10—regardless of your answers to any of the other Questions on this Special Verdict Form.]

9. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the accident, up to the time of this verdict, for:

- a. Past pain, disability, and emotional distress? \$ \_\_\_\_\_
- b. Past wage loss? \$ \_\_\_\_\_
- c. Past health care expenses? \$ \_\_\_\_\_

10. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by the accident, for:

- a. Future pain, disability, and emotional distress? \$ \_\_\_\_\_
- b. Loss of future earning capacity? \$ \_\_\_\_\_
- c. Future health care expenses? \$ \_\_\_\_\_

---

### USE NOTE

The questions in this special verdict form correspond with the following jury instructions:

- 1. CIVJIG 25.10: Negligence and Reasonable Care.
- 2. CIVJIG 27.10: Direct Cause.
- 3. CIVJIG 25.10: Negligence and Reasonable Care.
- 4. CIVJIG 27.10: Direct Cause.
- 5. CIVJIG 28.15: Comparative Fault.
- 6–8. CIVJIG 65.50: No Fault Insurance.
- 9a. CIVJIG 91.10: Items of Personal Damage—Past Damage—Bodily and Mental Harm.
- 9b. CIVJIG 91.20: Items of Personal Damage—Past Damage—Loss of Earnings.



- 9c. CIVJIG 91.15: Items of Personal Damage—Past Damage—Medical Supplies.
- 10a. CIVJIG 91.25: Items of Personal Damage—Future Damage—Bodily Harm and Mental Harm.
- 10b. CIVJIG 91.35: Items of Personal Damage—Future Damage—Loss of Earning Capacity.
- 10c. CIVJIG 91.30: Items of Personal Damage—Future Damage—Medical Supplies, Hospital, and Medical Expense.

### AUTHORITIES

In *Simpson v. American Family Insurance Company*, 603 N.W.2d 860, 862, n. 1 (Minn. Ct. App. 2000), the court of appeals emphasized the importance of preventing jury confusion between the loss of future income and the loss of past income. Consistent with the court's suggestion in that case, this Special Verdict Form uses "earning capacity" to refer to the plaintiff's loss of future earnings.

## CIVSVF 65.91

## UNDERINSURED MOTORIST INSURANCE

1. Was (underinsured motorist) negligent?

---

Yes or No

2. *If your answer to question 1 was "Yes," then answer this question: Was this negligence by (underinsured motorist) a direct cause of the (accident) (collision) (event)?*

---

Yes or No

3. Was (plaintiff) negligent?

---

Yes or No

4. *If your answer to question 3 was "Yes," then answer this question: Was this negligence a direct cause of the (accident) (collision) (event)?*

---

Yes or No

[If you answered "Yes" to Questions 2 and 4, then answer Question 5.]

5. Taking all the negligence that contributed as a direct cause of the (accident) (collision) (event) to be 100%, what percentage do you attribute to:

(Underinsured motorist)

---

%

(plaintiff)

---

%

TOTAL 100%

6. Did (plaintiff) sustain a permanent disfigurement as a direct cause of the (accident) (collision) (event)?

---

Yes or No

7. Did (plaintiff) sustain a permanent injury as a direct cause of the (accident) (collision) (event)?

---

Yes or No

8. Did the plaintiff sustain a disability of 60 days or more as a direct cause of the (accident) (collision) (event)?

---

Yes or No

[You must answer questions 9 and 10 regardless of your answers to any of the other questions on this Special Verdict Form.]

9. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the (accident) (collision) (event) up to the time of this verdict for:
- a. Past pain, disability and emotional distress? \$ \_\_\_\_\_
  - b. Past wage loss? \$ \_\_\_\_\_
  - c. Past healthcare expenses? \$ \_\_\_\_\_
10. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by the (accident) (collision) (event) for:
- a. Future pain, disability and emotional distress? \$ \_\_\_\_\_
  - b. Loss of future earning capacity? \$ \_\_\_\_\_
  - c. Future healthcare expenses? \$ \_\_\_\_\_

---

### USE NOTE

A lawsuit to recover underinsured motorist insurance benefits is a contract claim, although the contract claim turns on questions of negligence, causation, comparative fault, damages, and tort thresholds.

If there are fact questions concerning whether the injury arose out of the maintenance or use of a motor vehicle, those questions can be introduced into the special verdict form.

The questions in this special verdict form correspond with the following jury instructions:

- 1. CIVJIG 25.10: Negligence and Reasonable Care.
- 2. CIVJIG 27.10: Direct Cause.
- 3. CIVJIG 25.10: Negligence and Reasonable Care.
- 4. CIVJIG 27.10: Direct Cause.
- 5. CIVJIG 28.15: Comparative Fault.
- 6–8. CIVJIG 65.50: No-Fault Automobile Insurance.

- 9a. CIVJIG 91.10: Items of Personal Damage—Past Damage—Bodily and Mental Harm.
- 9b. CIVJIG 91.20: Items of Personal Damage—Past Damage—Loss of Earnings.
- 9c. CIVJIG 91.15: Items of Personal Damage—Past Damage—Medical Supplies.
- 10a. CIVJIG 91.25: Items of Personal Damage—Future Damage—Bodily Harm and Mental Harm.
- 10b. CIVJIG 91.35: Items of Personal Damage—Future Damage—Loss of Earning Capacity.
- 10c. CIVJIG 91.30: Items of Personal Damage—Future Damage—Medical Supplies, Hospital, and Medical Expense.

### AUTHORITIES

Underinsured motorist insurance is “coverage for the protection of persons insured under that coverage who are legally entitled to recover damages for bodily injury from owners or operators of underinsured motor vehicles.” M.S.A. § 65B.43, subd. 19. An underinsured motor vehicle is defined as “a motor vehicle or motorcycle to which a bodily injury liability policy applies at the time of the accident but its limit for bodily injury liability is less than the amount needed to compensate the insured for actual damages.” M.S.A. § 65B.43, subd. 17.

Underinsured motorist insurance is intended to protect against the risk that a negligent driver of another vehicle will have inadequate liability insurance. *Johnson v. American Fam. Mut. Ins. Co.*, 426 N.W.2d 419, 422 (Minn. 1988); *Meyer v. Illinois Farmers Ins. Group*, 371 N.W.2d 535, 537 (Minn. 1985). It applies only where the damages the insured is legally entitled to recover from the tortfeasor exceed the tortfeasor’s liability insurance limits. *Richards v. Milwaukee Ins. Co.*, 518 N.W.2d 26, 28 (Minn. 1994). Any basic economic loss benefits must be deducted from the damages in order to determine whether the “actual damages” the claimant seeks exceed the tortfeasors liability insurance limits. 518 N.W.2d at 28.

The determination of whether a motor vehicle is underinsured must be made after the deduction of basic economic loss benefits from the damages award required by M.S.A. § 65B.51, subd. 1. *Richards v. Milwaukee Ins. Co.*, 518 N.W.2d 26, 28 (Minn. 1994).

An action to recover underinsured motorist insurance benefits is a contract claim, but it raises the same issues of tort liability and damages as in a tort action. *Employers Mut. Cos. v. Nordstrom*, 495 N.W.2d 855, 856 (Minn. 1993).



## CIVSVF 65.92

## UNINSURED MOTORIST INSURANCE

1. Was (uninsured motorist) (unidentified motorist) negligent?

---

Yes or No

2. *If your answer to question 1 was "Yes," then answer this question:* Was this negligence by (uninsured motorist) (unidentified motorist) a direct cause of the (accident) (collision) (event)?

---

Yes or No

3. Was (plaintiff) negligent?

---

Yes or No

4. *If your answer to question 3 was "Yes," then answer this question:* Was this negligence by (plaintiff) a direct cause of the (accident) (collision) (event)?

---

Yes or No

[If you answered "Yes" to Questions 2 and 4, then answer Question 5.]

5. Taking all the negligence that contributed as a direct cause of the (accident) (collision) (event) to be 100%, what percentage do you attribute to:

(motorist) \_\_\_\_\_%

(plaintiff) \_\_\_\_\_%

TOTAL 100%

6. Did (plaintiff) sustain a permanent disfigurement as a direct cause of the (accident) (collision) (event)?

---

Yes or No

7. Did (plaintiff) sustain a permanent injury as a direct cause of the (accident) (collision) (event)?

---

Yes or No

8. Did the plaintiff sustain a disability of 60 days or more as a direct cause of the (accident) (collision) (event)?

---

Yes or No

[You must answer questions 9 and 10 regardless of your answers to any of the other questions on this Special Verdict Form. Do not apply any percentage of fault you might have found in your answer to question 5 to your answers to questions 9 and 10.]

9. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the (accident) (collision) (event) up to the time of this verdict for:

- |    |   |          |
|----|---|----------|
| a. | Past pain, disability and emotional distress? | \$ _____ |
| b. | Past wage loss?                               | \$ _____ |
| c. | Past healthcare expenses?                     | \$ _____ |

10. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by the (accident) (collision) (event) for:

- |    |   |          |
|----|---|----------|
| a. | Future pain, disability and emotional distress? | \$ _____ |
| b. | Loss of future earning capacity?                | \$ _____ |
| c. | Future healthcare expenses?                     | \$ _____ |

---

### USE NOTE

An uninsured motorist insurance suit is a contract cause of action, although the contract claim turns on questions of negligence, causation, comparative fault, and damages.

In uninsured motorist actions, the allegedly at fault driver may either be identified and the driver of an uninsured vehicle or, in the alternative, the driver of a vehicle that left the scene may not have been identified. This verdict form takes both into consideration as alternatives.

Minnesota law does not require contact between the uninsured vehicle and the plaintiff's vehicle in order to trigger an uninsured motorist claim. Thus, the appropriate verdict form will depend upon whether or not the at-fault driver was identified. If only the type of vehicle (pickup truck, car, or blue car, for example) is known, that information can be incorporated within the verdict form.

While the tort thresholds apply to claims against an insurer for uninsured motorist insurance coverage, they are inapplicable to claims against the uninsured motorist. The tort threshold provision, M.S.A. § 65B.51, subd. 1, requires an insured defendant in order for the thresholds to apply.

If there are fact questions concerning whether the injury arose out of the maintenance or use of a motor vehicle, those questions can be introduced into the special verdict form.

The questions in this special verdict form correspond with the following jury instructions:

1. CIVJIG 25.10: Negligence and Reasonable Care.
2. CIVJIG 27.10: Direct Cause.
3. CIVJIG 25.10: Negligence and Reasonable Care.
4. CIVJIG 27.10: Direct Cause.
5. CIVJIG 28.15: Comparative Fault.
- 6–8. CIVJIG 65.50: No-Fault Automobile Insurance.
- 9a. CIVJIG 91.10: Items of Personal Damage—Past Damage—Bodily and Mental Harm.
- 9b. CIVJIG 91.20: Items of Personal Damage—Past Damage—Loss of Earnings.
- 9c. CIVJIG 91.15: Items of Personal Damage—Past Damage—Medical Supplies.
- 10a. CIVJIG 91.25: Items of Personal Damage—Future Damage—Bodily Harm and Mental Harm.
- 10b. CIVJIG 91.35: Items of Personal Damage—Future Damage—Loss of Earning Capacity.
- 10c. CIVJIG 91.30: Items of Personal Damage—Future Damage—Medical Supplies, Hospital, and Medical Expense.

#### AUTHORITIES

Uninsured motorist coverage is “coverage for the protection of persons insured under that coverage who are legally entitled to recover damages for bodily injury from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles.” M.S.A. § 65B.43, subd. 18. An uninsured motor vehicle is “a motor vehicle or motorcycle for which a plan of reparation security meeting the requirements” of the No-Fault Act is not in effect. M.S.A. § 65B.43, subd. 16.

An uninsured motorist insurance claim is a contract action, although the plaintiff must prove damages and the fault of the uninsured driver. *Miklas v. Parrott*, 684 N.W.2d 458, 462 (Minn. 2004).

The court of appeals has held that the tort thresholds apply to uninsured motorist insurance claims. *Johnson v. State Farm Mut. Auto. Ins. Co.*, 574 N.W.2d 468, 471 (Minn. Ct. App. 1998); *Braginsky v. State Farm Mut. Auto. Ins. Co.*, 624 N.W.2d 789, 793 (Minn. Ct. App. 2001).

It is not necessary that there be physical contact between the injured person and the uninsured motor vehicle for uninsured motorist insurance coverage to apply. *Halseth v. State Farm Mut. Auto. Ins. Co.*, 268 N.W.2d 730, 732–33 (Minn. 1978).



## CATEGORY 70

### PARENTS AND CHILDREN

---

#### *Table of Instructions*

CIVJIG 70.10	Care Required for Safety of Child
CIVJIG 70.15	Reasonable Care—Duty of Child
CIVJIG 70.20	Reasonable Care—Duty of Child—Operation of Automobile, Airplane, or Powerboat
CIVJIG 70.25	Negligence—Parental Liability for Torts of Children—Specific Propensity
CIVJIG 70.30	Negligence—Parental Liability for Torts of Children—Negligent Entrustment
CIVJIG 70.35	Children—Punishment by Teacher or Person Other Than Parent

---

#### INTRODUCTORY NOTE

The instructions in this category deal with several unrelated problems concerning children, the parent-child relationship, and the right to discipline a child by a teacher or person other than a parent.

The trier of fact must take into consideration whether a person knows or has reason to know of the presence of children in determining whether that person exercised reasonable care under the circumstances. See *Van Asch v. Rutili*, 286 Minn. 9, 12, 174 N.W.2d 101, 103 (1970); *Shawley v. Husman*, 247 Minn. 510, 511, 78 N.W.2d 60, 61–62 (1956).

The ordinary reasonable care standard as applied to children requires the trier of fact to determine whether the child in question used the reasonable care of a child with the same age, intelligence, training and experience would have exercised in the same or similar circumstances. *E.g.*, *Romanik v. Toro Co.*, 277 N.W.2d 515, 518 (Minn. 1979); *Toetschinger v. Ihnot*, 312 Minn. 59, 69, 250 N.W.2d 204, 210 (1977); *Aldes v. St. Paul Ball Club, Inc.*, 251 Minn. 440, 443, 88 N.W.2d 94, 97 (1958). The court in *Toetschinger* rejected any automatic age cut-off for determining the contributory negligence of a child, holding that a child of five years and eight months could be held to be contributorily negligent. 312 Minn. at 69–70, 250 N.W.2d at 210. In *Gryc v. Dayton-Hudson*, 297 N.W.2d 727, 743 (Minn. 1980), however, the court upheld the trial court's conclusion that a child four years, one and a half months old could not be contributorily negligent as a matter of law in failing to appreciate the danger associated with the flammability of the cotton

nightgown she was wearing when it caught fire. The Restatement (Third) of Torts § 10(b) (2010) takes the position that “[a] child less than five years of age is incapable of negligence.”

If the child engages in the operation of an automobile, airplane, or boat, however, the child will be held to an adult standard of care. *Dellwo v. Pearson*, 259 Minn. 452, 459, 107 N.W.2d 859, 863–64 (1961). The court in *Dellwo* was urged to adopt a broader standard of care that would have applied the adult standard of care to children whenever they engaged in an adult activity, but the court found it unnecessary to adopt the broader form of the rule, finding it sufficient to limit the application of the rule to children operating automobiles, airplanes, and powerboats. 259 Minn. at 459, 107 N.W.2d at 863–64 the court of appeals extended the rule to a case involving a teenager handling a gun in *Huebner v. Koelfgren*, 519 N.W.2d 488, 490 (Minn. Ct. App. 1994), rev. denied (Minn. Sept. 28, 1994) (case involving injuries caused by a BB gun, but court’s holding applied to teenagers handling guns). The adult standard of care will apply to the contributory negligence issue as well. *Miller v. State*, 306 N.W.2d 554, 555 (Minn. 1981).

The Restatement (Third) of Torts § 10(c) (2010) adopts the child’s standard of care unless the “child is engaging in a dangerous activity that is characteristically undertaken by adults.” The explanatory comment includes “driving a car, a tractor, and a motorcycle, and operating other motorized vehicles such as minibikes, motorscooters, dirt bikes, and snowmobiles” as examples of “dangerous adult activities.” *Id.*, cmt. f.

Absent special circumstances, parents are not liable for the torts of their children. They may be liable, however, in cases where the parents know that the child has a specific propensity to cause harm, knew or should have known that the child needed to be controlled in the particular circumstance, and had the ability to control the child and did not do so. *Republican Vanguard Ins. Co. v. Buehl*, 295 Minn. 327, 330, 204 N.W.2d 426, 428 (1973). Parents may also be liable for negligent entrustment to a minor of a dangerous instrument. Minnesota has adopted the tort of negligent entrustment as set out in Restatement (Second) of Torts § 390 (1965).

One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

*Axelson v. Williamson*, 324 N.W.2d 241, 243–44 (Minn. 1982) (negligent entrustment of a motor vehicle to a minor). Negligence on the part of the person entrusting the instrumentality must be accompanied by negligence on the part of the person to whom the instrumentality is

entrusted. 324 N.W.2d at 244. *See Clarine v. Addison*, 182 Minn. 310, 234 N.W. 295 (1931) (negligent entrustment of a firearm to child).

In addition, there are four statutory provisions that impose liability on parents, apart from any common law claims that might be brought against them. M.S.A. § 540.18 imposes vicarious liability upon a parent or guardian whose minor child willfully or maliciously damages property or causes injury to person, but limits recovery to special damages. M.S.A. § 604.14, subd. 1, imposes civil liability on a person who steals personal property from another for the value of the property when stolen, plus punitive damages of "either \$50 or up to 100 percent of its value when stolen, whichever is greater." Section 604.14, subd. 3, applies M.S.A. § 540.18 to damages claims, "except that recovery is not limited to special damages." M.S.A. § 611A.79, subd. 2, provides a civil cause of action for bias offenses. M.S.A. § 611A.79, subd. 4 applies section 540.18, except that the damages limitation is increased to \$5,000. However, parents or guardians are not liable if they made reasonable efforts to control the child. M.S.A. § 617.90 applies in cases where "graffiti" is placed on public or private property. Damages are recoverable for three times the cost of restoring the property, although the court has the option of ordering the person who performed the work to restore the property. Damages may be recovered from the person who placed the graffiti on the property or from the parent of a minor individual. Liability is limited as specified in M.S.A. § 540.18.

Parents are no longer immune from tort liability for injuries they negligently or intentionally cause their children. *See Anderson v. Stream*, 295 N.W.2d 595, 601 (Minn. 1980) (totally abolishing parental immunity).

In some cases, persons may have a defense to cases where a child is injured. Parents, guardians, teachers, or other lawful custodians of a child or pupil may be entitled to use reasonable force to restrain or correct the child or pupil. M.S.A. § 609.06 (6). There are statutory limitations on the use of force, however. *See* M.S.A. 121A.58 (limitations on use of corporal punishment); M.S.A. § 260C.007, subds. 5, 13 (child abuse and domestic child abuse).



## CIVJIG 70.10

## CARE REQUIRED FOR SAFETY OF CHILD

## Child safety

The fact that a person knows, or has reason to know, that children are likely to be around should be taken into account when deciding whether reasonable care was used. The duty always remains the same—reasonable care under the circumstances.

---

USE NOTE

This instruction is optional. It is merely a particularization of one of the circumstances to be considered in determining reasonable care.

If used, this instruction should be given immediately after CIVJIG 25.10 or 65.10.

## AUTHORITIES

While reasonable care requires a greater amount of vigilance toward children than toward ordinary adults, the standard of care is the same in both instances. *Van Asch v. Rutili*, 286 Minn. 9, 12, 174 N.W.2d 101, 103 (1970); *Shawley v. Husman*, 247 Minn. 510, 511, 78 N.W.2d 60, 61–62 (1956); see also *Toetschinger v. Ihnot*, 312 Minn. 59, 71–72, 250 N.W.2d 204, 211 (1977).

## Research References

*West's Key Number Digest*  
Negligence ¶237, 1065

*Legal Encyclopedias*  
C.J.S., Negligence §§ 132, 399, 472 to 495, 513



**CIVJIG 70.15****REASONABLE CARE—DUTY OF CHILD****Reasonable care by a child**

[Negligence is the failure to use reasonable care.]

You must decide if (name of child) used reasonable care<sup>1</sup>. This means you must decide what care a reasonable child would have used who was:

1. The same age, intelligence, training, and experience
2. In the same or similar circumstances

as (name of child) on the date of the (collision) (accident) (event).

---

**USE NOTE**

This instruction should be used in cases where the child has engaged in a typical child's activity. In cases where the child has engaged in an adult activity, the standard negligence instruction in CIVJIG 25.10 should be used, along with CIVJIG 70.20, which defines the adult activities that will subject a child to an adult standard of care.

**AUTHORITIES**

A child engaged in the operation of an automobile, airplane, or powerboat, or using a gun, is held to an adult standard of care. (See CIVJIG 70.20.)

Minnesota follows the Massachusetts rule that contributory negligence of a child, regardless of age, is an issue for the jury under proper instructions. See *Romanik v. Toro Co.*, 277 N.W.2d 515, 518 (Minn. 1979); *Toetschinger v. Ihnot*, 312 Minn. 59, 65, 250 N.W.2d 204, 208 (1977); William Binchy, *The Adult Activities Doctrine in Negligence Law*, 11 Wm. Mitchell L.Rev. 733 (1985). There is no minimum age below which the child is incapable of contributory negligence. See *Watts v. Erickson*, 244 Minn. 264, 267, 69 N.W.2d 626, 628 (1955); *Eckhardt v. Hanson*, 196 Minn. 270, 272–273, 264 N.W. 776, 777–778 (1936). The degree of care expected of a child is that commensurate with the age, mental capacity, and understanding of children of similar age, acting

under similar circumstances. See *Toetschinger v. Ihnot*, 312 Minn. 59, 65, 250 N.W.2d 204, 208 (1977); *Pelzer v. Lange*, 254 Minn. 46, 49, 93 N.W.2d 666, 669 (1958); *Kachman v. Blosberg*, 251 Minn. 224, 230-231, 87 N.W.2d 687, 693 (1958).

On the issue of contributory negligence of a child, the child is not held to the same standard of care as an adult. A child is expected to exercise only the same degree of care expected of one of similar age, experience, training, and mental capacity, acting under similar circumstances. See *Romanik v. Toro Co.*, 277 N.W.2d 515, 518 (Minn. 1979); *Toetschinger v. Ihnot*, 312 Minn. 59, 69, 250 N.W.2d 204, 210 (1977); *Aldes v. St. Paul Ball Club, Inc.*, 251 Minn. 440, 443, 88 N.W.2d 94, 97 (1958); *Kachman v. Blosberg*, 251 Minn. 224, 230-231, 87 N.W.2d 687, 693 (1958); *Mortenson v. Hindahl*, 247 Minn. 356, 361, 77 N.W.2d 185, 188 (1956); *Watts v. Erickson*, 244 Minn. 264, 267, 69 N.W.2d 626, 628 (1955); *Warning v. Kanabec County Co-op. Oil Ass'n*, 231 Minn. 293, 298, 42 N.W.2d 881, 883 (1950); *Twist v. Winona & St. P. R.R.*, 39 Minn. 164, 168, 39 N.W. 402, 405 (1888).

Although the supreme court in *Dellwo v. Pearson*, 259 Minn. 452, 107 N.W.2d 859 (1961) indicated that there may be a difference between the standard of care required of a child in protecting himself against harm, and the standard that may be applicable when his activities expose others to harm, the court's decision in *Miller v. State*, 306 N.W.2d 554, 555 (Minn. 1981), states otherwise. *Miller* involved a minor operating an automobile. The court held that the minor would be held to an adult standard of care, even though contributory negligence was the issue. Therefore, when a minor is engaged in an adult activity, the adult standard of care should apply, whether contributory or affirmative negligence is in issue. If the minor is not engaged in an adult activity, the child standard of care should apply, again, irrespective of whether the issue is affirmative or contributory negligence.

#### Research References

*West's Key Number Digest*  
Infants ☞61

*Legal Encyclopedias*  
C.J.S., Infants §§ 280 to 286

## CIVJIG 70.20

**REASONABLE CARE—DUTY OF CHILD—  
OPERATION OF AUTOMOBILE, AIRPLANE, OR  
POWERBOAT****Reasonable care expected of a child**

A child must use the same care as an adult when [operating an (automobile) (airplane) (boat)] [handling a gun] [——].

---

**USE NOTE**

This instruction should be given with CIVJIG 25.10. The appellate courts in Minnesota have not taken a blanket approach holding that children engaged in inherently adult activities are held to an adult standard of care. Rather, the courts have considered the question on an activity-by-activity basis, which accounts for the limitations in the instruction. The blank at the end of the instruction indicates that there may be other situations where a child may be held to an adult standard of care.

**AUTHORITIES**

The Minnesota Supreme Court in *Dellwo v. Pearson*, 259 Minn. 452, 107 N.W.2d 859 (1961) held that, in the operation of an automobile, airplane, or powerboat, a child is to be held to the same standard of care as an adult. The court rejected a broader rule that would have held a child to an adult standard of care whenever engaging in an adult activity:

However, it is unnecessary to this case to adopt a rule in such broad form, and, therefore, we expressly leave open the question whether or not that rule should be adopted in this state. For the present it is sufficient to say that no reasonable grounds for differentiating between automobiles, airplanes, and powerboats appears, and that a rule requiring a single standard of care in the operation of such vehicles, regardless of the age of the operator, appears to us to be required by the circumstances of contemporary life.

259 Minn. at 459, 107 N.W.2d at 863–864.

In *Huebner v. Koelfgren*, 519 N.W.2d 488, 490 (Minn. Ct. App. 1994), rev. denied (Minn. Sept. 28, 1994), the court of appeals added a fourth exception in holding that a teenager handling a gun is subject to an adult standard of care. The court also adhered to *Dellwo*'s more cau-

tious approach to the issue when it clearly stated that it was not holding that the adult standard of care applies whenever a child engages in an “inherently adult activity.” 519 N.W.2d at 490.

In *Miller v. State*, 306 N.W.2d 554, 555 (Minn. 1981), the court held that a minor operating an automobile should be held to an adult standard of care, even though contributory negligence was the issue, resolving the issue left open in *Dellwo*.

#### Research References

*West's Key Number Digest*

Automobiles ⅈ157; Infants ⅈ61

*Legal Encyclopedias*

C.J.S., Infants §§ 280 to 286; Motor Vehicles §§ 541 to 544



**CIVJIG 70.25****NEGLIGENCE—PARENTAL LIABILITY FOR TORTS  
OF CHILDREN—SPECIFIC PROPENSITY****Parental responsibility**

A parent must exercise reasonable care to control a child.  
A parent is negligent if he or she:

1. Knew or should have known that the child had shown similar harmful behavior, habits, or characteristics in the past, and
2. Knew or should have known that the child needed to be controlled in the particular circumstance, and
3. Had the ability to control the child and did not do so.

“Reasonable care” is the care a reasonable person would use in similar circumstances. A parent’s failure to exercise reasonable care under these circumstances is negligence.

---

**USE NOTE**

There are two separate instructions on parental negligence for failure to control a child. This instruction deals with failure to control a child who has a specific propensity to cause harm. CIVJIG 70.30 covers cases where there is negligent entrustment of a dangerous instrumentality to a child.

**AUTHORITIES**

A parent has a duty of exercising reasonable care to control his or her minor child to prevent the child from creating an unreasonable risk of harm, if the parent knows or has reason to know that he or she has the ability to control the child and of the necessity and opportunity to exercise such control. *See Republic Vanguard Ins. Co. v. Buehl*, 295 Minn. 327, 330, 204 N.W.2d 426, 428 (1973); Dan B. Dobbs et al., *The Law of Torts* 2d § 358 (2011); Restatement (Second) of Torts § 316 (1965); Restatement (Third) of Torts § 41 (2011). In general, courts imposing liability under this theory require a showing that the child

has a specific propensity to cause harm, and that the parents are aware of that propensity. *See, e.g., Hoff v. Vacaville Unified School District*, 19 Cal.4th 925, 935, 968 P.2d 522, 528, 80 Cal.Rptr.2d 811, 817 (1998); *Popple v. Rose*, 254 Neb. 1, 573 N.W.2d 765 (Neb. 1998).

The theories of recovery under CIVJIG 70.25 and 70.30 should not be confused with the liability for negligence that would be imposed on a parent who causes injury to his or her own child. Such liability is now permitted because of the abolition of parental immunity. *See Anderson v. Stream*, 295 N.W.2d 595, 601 (Minn. 1980).

**Research References**

*West's Key Number Digest*  
Parent and Child ⇨13.5(4)

*Legal Encyclopedias*  
C.J.S., Parent and Child §§ 312 to 315

**CIVJIG 70.30****NEGLIGENCE—PARENTAL LIABILITY FOR TORTS  
OF CHILDREN—NEGLIGENT ENTRUSTMENT****Parental responsibility**

A parent must exercise reasonable care to control a child's possession of a dangerous instrument.

A parent is negligent if he or she:

1. Knew or should have anticipated, because of the child's age, characteristics, or past conduct, that possession of a dangerous instrument by the child might result in injury to others, and
2. Let the child have, or gain access to, a dangerous instrument.

"Reasonable care" is the care a reasonable person would use in similar circumstances. A parent's failure to exercise reasonable care under these circumstances is negligence.

---

**USE NOTE**

There are two separate instructions on parental negligence for failure to control a child. This instruction deals with a parent's failure to exercise reasonable care to control a child's possession of a dangerous instrument. CIVJIG 70.25 covers cases where there is negligent supervision of a child known to have dangerous behavior.

**AUTHORITIES**

Minnesota has adopted the tort of negligent entrustment as set out in Restatement (Second) of Torts § 390 (1965).

One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.

*Axelson v. Williamson*, 324 N.W.2d 241, 243–44 (Minn. 1982) (negligent

entrustment of a motor vehicle to a minor). Negligence on the part of the person entrusting the instrumentality must be accompanied by negligence on the part of the person to whom the instrumentality is entrusted. 324 N.W.2d at 244. *See Clarine v. Addison*, 182 Minn. 310, 312, 234 N.W. 295, 296 (1931) (parent not liable for negligent entrustment of a firearm to child).

#### Research References

##### *West's Key Number Digest*

Automobiles Ⓒ195(3); Parent and Child Ⓒ13.5(4); Weapons Ⓒ22

##### *Legal Encyclopedias*

C.J.S., Motor Vehicles §§ 832, 838 to 839, 841, 846; Parent and Child §§ 312 to 315



**CIVJIG 70.35****CHILDREN—PUNISHMENT BY TEACHER OR  
PERSON OTHER THAN PARENT****The right to use force**

A (person in control of a child) (non-public school teacher) (parent) (guardian) (conservator) has the right to use reasonable force to discipline a child under his or her control.

**Reasonable force**

[(Name of person) has admitted using force to discipline the child. You must decide if the force used was reasonable.]

[If you find that (name of person) used force to discipline the child, then you must decide if the force used was reasonable.]

In making this decision, consider what force would have been reasonable in the circumstances.

---

**USE NOTE**

The basic instruction should be used where there is no fact issue as to whether physical punishment was employed by the person standing in loco parentis. Where such issue exists, the bracketed paragraph should be used in lieu of the paragraph immediately preceding it. Public school teachers are excluded from the instruction because of M.S.A. § 121A.58, subd. 2.

**AUTHORITIES**

M.S.A. § 609.06, subd. 1 provides that:

[R]easonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

\* \* \*

(6) when used by a parent, guardian, teacher or other lawful custodian of a child or pupil, in the exercise of lawful authority, to restrain or correct such child or pupil \* \* \* .

However, M.S.A. § 121A.58 provides:

**Subdivision 1. Definition.** For the purpose of this section, “corporal punishment” means conduct involving:

- (1) hitting or spanking a person with or without an object;  
or
- (2) unreasonable physical force that causes bodily harm or substantial emotional harm.

**Subd. 2. Corporal punishment not allowed.** An employee or agent of a public school district shall not inflict corporal punishment or cause corporal punishment to be inflicted upon a pupil to reform unacceptable conduct or as a penalty for unacceptable conduct.

**Subd. 3. Violation.** Conduct that violates subdivision 2 is not a crime under section 645.241, but may be a crime under chapter 609 if the conduct violates a provision of chapter 609.

This statute substantially limits the use of corporal punishment in schools.

M.S.A. § 609.06, subd. 1(7), authorizes a school employee or school bus driver to use reasonable force to restrain or correct a child or pupil, or to prevent bodily harm or death to another.

M.S.A. § 609.377 defines “malicious punishment of a child” and M.S.A. § 609.378 defines “neglect or endangerment of a child.” Violations of those statutes are additional potential limitations on the right of parents to use force to discipline their children.

#### **Research References**

*West's Key Number Digest*  
Schools ⇨176

*Legal Encyclopedias*  
C.J.S., Schools and School Districts §§ 796 to 797

## CATEGORY 72

### PRIVACY

---

#### *Table of Instructions*

CIVJIG 72.10	Intrusion Upon Seclusion
CIVJIG 72.15	Appropriation
CIVJIG 72.20	Public Disclosure of Private Facts
CIVJIG 72.25	Invasion of Privacy—Damages

#### SPECIAL VERDICT FORMS

CIVSVF 72.90	Invasion of Privacy—Intrusion
CIVSVF 72.91	Invasion of Privacy—Appropriation
CIVSVF 72.92	Invasion of Privacy—Publication of Private Facts

---

#### INTRODUCTORY NOTE

The Restatement (Second) of Torts (1977) lists four privacy causes of action: intrusion upon seclusion; appropriation; publication of private facts; and false light. In *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998), the Minnesota Supreme Court recognized the first three privacy actions, but rejected the tort of false light. The court indicated its intent to rely on the Restatement formulations of privacy as the primary guidelines for the newly formulated privacy torts.

#### *Intrusion upon Seclusion*

Restatement (Second) of Torts § 652B (1977) establishes the tort of intrusion:

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

#### *Appropriation*

Restatement (Second) of Torts § 652C (1977) covers the tort of appropriation:

One who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of his privacy.

*Public Disclosure of Private Facts*

Restatement (Second) of Torts § 652BD:

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that

- (a) would be highly offensive to a reasonable person, and
- (b) is not of legitimate concern to the public.

*Constitutional Privilege*

The Constitution limits the scope of liability for both appropriation and publicity or public disclosure claims. At a minimum, the First Amendment prohibits the imposition of liability for the public disclosure of public record information that is lawfully obtained. *See Florida Star v. B.J.F.*, 491 U.S. 524, 532–533, 109 S.Ct. 2603, 2608–2609, 105 L.Ed.2d 443 (1989); *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 103, 99 S.Ct. 2667, 2671, 61 L.Ed.2d 399 (1979); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491, 95 S.Ct. 1029, 1044, 43 L.Ed.2d 328 (1975). Beyond that, there are also constitutional limitations on the imposition of liability for the publication of true information. *See, e.g., Shulman v. Group W Productions, Inc.*, 18 Cal.4th 200, 74 Cal.Rptr.2d 843, 955 P.2d 469, 483–86 (1998). Any statements about a private person will have to be substantially relevant to a newsworthy matter. 74 Cal.Rptr.2d 843, 955 P.2d at 488; *Robert C. Ozer, P.C. v. Borquez*, 940 P.2d 371, 378 (Colo. 1997).

In addition, reporting of newsworthy matters or matters that are of public concern does not constitute appropriation, even if the impact is to increase a publisher's circulation or profits. Dan B. Dobbs, *The Law of Torts* § 425, at 1199–1200 (2000).

*Common Law Privileges*

Questions concerning the applicability of absolute and qualified privileges may arise. For a discussion of those privileges in the defamation context, *see* CIVJIG 50.35 and the accompanying Authorities.

*Damages*

The damages that may be awarded in privacy actions are set out in Restatement (Second) of Torts § 652H:

One who has established a cause of action for invasion of his privacy is entitled to recover damages for

- (a) the harm to his interest in privacy resulting from the invasion;



(b) his mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and

(c) special damage of which the invasion is a legal cause.

The comments explain in greater detail the damages that should be compensable in privacy actions:

A cause of action for invasion of privacy, in any of its four forms, entitles the plaintiff to recover damages for the harm to the particular element of his privacy that is invaded. Thus one who suffers an intrusion upon his solitude or seclusion, under § 652B, may recover damages for the deprivation of his seclusion. One whose name, likeness or identity is appropriated to the use of another, under § 652C, may recover for the loss of the exclusive use of the value so appropriated. One to whose private life publicity is given, under § 652D, may recover for the harm resulting to his reputation from the publicity . . . .

Restatement (Second) of Torts § 652H cmt. a.

The comments also note that the plaintiff may be entitled to recover “damages for emotional distress or personal humiliation that he proves to have been actually suffered by him, if it is of a kind that normally results from such an invasion and it is normal and reasonable in its extent.” Restatement (Second) of Torts § 652H cmt. b. The plaintiff should not have to meet the separate elements of intentional infliction of emotional distress in order to be entitled to recover for mental distress flowing from the invasion of privacy. See *Fischer v. Hooper*, 143 N.H. 585, 732 A.2d 396, 401–02 (1999) (plaintiff need not meet elements of intentional infliction of emotional distress to recover emotional distress damages in a privacy action); *Lickteig v. Alderson, Ondov, Leonard & Sween, P.A.*, 556 N.W.2d 557, 560 (Minn. 1996) (plaintiffs may recover damages for emotional distress where there is a “direct invasion” of the rights of the plaintiff in cases such as defamation, malicious prosecution, or other like willful or malicious conduct, citing *State Farm Mut. Auto. Ins. Co. v. Village of Isle*, 265 Minn. 360, 368, 122 N.W.2d 36, 41 (1963)).

Special damages may also be recovered. The kind of special damage the Restatement envisions is the same as in defamation cases. Restatement (Second) of Torts § 652H cmt. d. See CIVJIG 50.60 for an instruction on special damages.

The Restatement anticipates that questions will also arise concerning the application of constitutional limitations on the right to recover damages:

It seems likely that the holding of *Gertz v. Robert Welch, Inc.* (1974), 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789, to the effect that the

First Amendment requires that recovery for defamation be confined to compensation for “actual injury” and cannot be extended to “presumed or punitive damages, at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth,” will be held applicable to actions for invasion of privacy based upon . . . § 652D (publicity to private life) . . . . The proof of actual harm need not be of pecuniary loss and in the case of emotional distress may be simply the plaintiff’s testimony. Whether in the absence of proof of actual harm an action might be maintained for nominal damages remains uncertain . . . .

Restatement (Second) of Torts § 652H cmt. c.

In *Richie v. Paramount Pictures Corp.*, 544 N.W.2d 21, 27 (Minn. 1996), the Minnesota Supreme Court held that a private plaintiff involved in a matter of public concern must prove actual harm to reputation to be entitled to recover for emotional harm. Whether the court will require actual harm to reputation in cases involving privacy claims is one of the questions that will have to be answered in the future. If the *Richie* case applies only to public disclosure privacy cases, however, the limitation on damages will be irrelevant, because the presence of a matter of public concern will preclude any recovery for public disclosure, rendering the damages issue moot. See *Shulman v. Group W Productions, Inc.*, 18 Cal.4th 200, 74 Cal.Rptr.2d 843, 955 P.2d 469, 483–86 (1998).

**CIVJIG 72.10****INTRUSION UPON SECLUSION****Invasion of privacy by intrusion upon seclusion**

Invasion of privacy by intrusion upon seclusion occurs when:

1. One person intentionally interferes, physically or otherwise, with the (solitude) (seclusion) (private concerns or affairs) of another person, and
2. That person has a reasonable expectation of privacy in his or her (solitude) (seclusion) (private concerns or affairs), and
3. The intrusion occurs in a way that would be highly offensive to a reasonable person in that position.

---

**USE NOTE**

Minnesota recognizes three branches of invasion of privacy as they are defined in the Restatement (Second) of Torts (1977). This instruction covers intrusion upon the seclusion of another, as set out in section 652B of the Restatement. There are three elements to the claim: (1) There must be an intrusion, physically or otherwise; (2) It must be intentional; and (3) It must be highly offensive to a reasonable person. Different types of intrusion may be actionable under this tort. The appropriate language should be used in the second element. If the intrusion is on a person's physical solitude or seclusion, the language in the first two parentheticals should be used. If the intrusion is into the private affairs or concerns of a person, the second should be used.

**AUTHORITIES**

In *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231, 236 (Minn. 1998), the Minnesota Supreme Court recognized the tort of intrusion upon seclusion, as defined in Restatement (Second) of Torts § 652B (1977):

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

There are three elements to the claim: (1) There must be an intru-



sion upon a person's seclusion; (2) It must be intentional; and (3) It must be highly offensive to a reasonable person. *Phillips v. Grendahl*, 312 F.3d 357, 372 (8th Cir. 2002); *Bauer v. Ford Motor Credit Co.*, 149 F.Supp.2d 1106, 1108 (D. Minn. 2001); *Swarthout v. Mutual Services Life Ins. Co.*, 632 N.W.2d 741, 744 (Minn. Ct. App. 2001). The court in *Bauer* noted that the "highly offensive to a reasonable person" requirement "suggests a standard that is appropriate for a jury instruction," but that there should be a preliminary determination of "offensiveness" a court should make in determining the existence of an intrusion claim. The factors the court suggested for consideration in making that determination "include the degree of intrusion, the context, conduct and circumstances surrounding the intrusion as well as the intruder's motives and objectives, the setting into which he intrudes, and the expectations of those whose privacy is invaded," 149 F.Supp.2d at 1109, citing *Miller v. National Broadcasting Co.*, 187 Cal.App.3d 1463, 232 Cal.Rptr. 668, 678-79 (1986), rev. denied (Cal. Mar. 11, 1986), as well as "the number and frequency of the intrusive contacts." 149 F.Supp.2d at 1109. The court in *Bauer* emphasized the importance of context in evaluating intrusion claims. 149 F.Supp.2d at 1110 (whether conduct will be deemed highly offensive largely a function of social conventions and expectations, citing *PETA v. Bobby Berosini, Ltd.*, 895 Pl.2d 1269, 1281 (Nev. 1995)).

The intrusion covered by section 652B of the Restatement "consists solely of an intentional interference" with a person's "interest in solitude or seclusion," either as to the person or the person's private affairs or concerns. The interference must be of a kind that would be "highly offensive" to a reasonable person. Restatement (Second) of Torts § 652B cmt. a. The courts have "have recognized that there is some objectively-based threshold degree of repugnance that is required to sustain a claimed intrusion on seclusion." *Fabio v. Credit Bureau of Hutchinson*, 210 F.R.D. 688, 692-93 (D. Minn. 2002) (single phone call by debt collector insufficient to establish necessary degree of offensiveness); *Bauer v. Ford Motor Credit Co.*, 149 F.Supp.2d 1106 (D.Minn. 2001), *vac. in part* 140 F.Supp.2d 1019 (D.Minn. 2001) (defendant debt collectors received multiple and highly reliable confirmations that its records were inaccurate but continued to persist in debt collection culminating in repossession attempt at plaintiff's home raised fact question as to whether conduct was "highly offensive"); *Swarthout v. Mutual Service Life Insurance Co.*, 632 N.W.2d 741, 745 (Minn. Ct. App. 2001) (plaintiff's allegation that insurer altered medical release form to obtain medical information stated a cause of action for intrusion). The plaintiff must also have a reasonable expectation of seclusion or solitude in the place or data source. Restatement (Second) of Torts § 652B cmt. c; *Phillips v. Grendahl*, 312 F.3d 357, 372 (8th Cir. 2002) (no reasonable expectation of privacy in child support order);

The invasion may occur through physical intrusion into a place where the plaintiff has secluded himself, or it may be through the use of the defendant's senses, whether or not supplemented by mechanical aids. Intrusion may occur in other ways, such as through searches of



the plaintiff's mail, safe, or wallet. If the intrusion occurs, the defendant is liable, even though there is no publicity given to the information discovered as a result of the intrusion.

**Research References**

*West's Key Number Digest*

Torts ☞ 340, 380

## CIVJIG 72.15

## APPROPRIATION

## Invasion of privacy by appropriation

Invasion of privacy by appropriation occurs when a person appropriates another person's name or likeness for his or her own use or benefit.

---

USE NOTE

Minnesota recognizes three branches of invasion of privacy as they are defined in the Restatement (Second) of Torts (1977). This instruction covers the tort of appropriation as set out in section 652C.

## AUTHORITIES

In *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231, 236 (Minn. 1998), the Minnesota Supreme Court recognized the tort of appropriation as defined in Restatement (Second) of Torts § 652C (1977):

One who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of his privacy.

The tort of appropriation protects a person in the exclusive use of that person's identity, to the extent that it is represented by the person's name or likeness. The interest protected is in the nature of a property right, even though the protection of a person's feelings against emotional harm is a significant factor leading to recognition of the rule. Restatement (Second) of Torts § 652C cmt. a. The usual way in which appropriation occurs is use of the name or likeness of the plaintiff for advertising purposes or some other commercial purpose. The Restatement rule, however, is not limited to commercial appropriations. The rule applies whenever the defendant appropriates the plaintiff's name or likeness for his own purposes and benefit, even if not commercial and pecuniary. Restatement (Second) of Torts § 652C cmt. b.

The Restatement comments also impose limitations on the application of the tort:

The value of the plaintiff's name is not appropriated by mere mention of it, or by reference to it in connection with legitimate mention of his public activities; nor is the value of his likeness appropriated when it is published for purposes other than taking advantage of his reputation, prestige, or other value associated with him, for

purposes of publicity. No one has the right to object merely because his name or his appearance is brought before the public, since neither is in any way a private matter and both are open to public observation. It is only when the publicity is given for the purpose of appropriating to the defendant's benefit the commercial or other values associated with the name or the likeness that the right of privacy is invaded. The fact that the defendant is engaged in the business of publication, for example of a newspaper, out of which he makes or seeks to make a profit, is not enough to make the incidental publication a commercial use of the name or likeness

. . . .

Restatement (Second) of Torts § 652C cmt. d.

To the extent this tort provides for recovery for the commercial value of one's name or likeness, it overlaps to some degree with the "Right of Publicity" described by Restatement (Third) of Unfair Competition §§ 46–49 (1995). In *Ventura v. Titan Sports, Inc.*, 65 F.3d 725, 730 (8th Cir. 1995), a divided panel of the Eighth Circuit predicted that Minnesota would adopt the Right of Publicity tort. However, no Minnesota state court opinions contain the terms "Right of Publicity" and *Ventura* has not been cited by any Minnesota state court opinion.

Establishing the publicity tort may entitle the plaintiff to injunctive relief, *see* Restatement (Third) of Unfair Competition § 48 (1995), or money damages. *See* Restatement (Third) of Unfair Competition § 49.

#### Research References

*West's Key Number Digest*

Torts ⇨385, 405

## CIVJIG 72.20

## PUBLIC DISCLOSURE OF PRIVATE FACTS

## Invasion of privacy by public disclosure of private facts

Invasion of privacy by public disclosure of private facts occurs when:

1. A person discloses facts about the private life of another person, and
2. The facts are communicated to the public at large, or to so many people it is substantially certain to become public knowledge, and
3. The facts disclosed would be highly offensive to a reasonable person.

---

USE NOTE

Minnesota recognizes three branches of invasion of privacy as they are defined in the Restatement (Second) of Torts (1977). This instruction covers the tort of publicity given to private facts as set out in section 652D.

Section 652D also limits public disclosure to cases where the matter publicized "is not of legitimate concern to the public." It is not clear whether this factor is a question of law for the court, or a question of fact for the jury in appropriate cases. The assumption underlying this instruction is that the issue will be resolved by the trial court as a matter of law. If the trial court determines that it should be a question of fact for the jury, a fourth element would have to be added to the instruction stating "The facts are not of legitimate concern to the public."

## AUTHORITIES

In *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231, 236 (Minn. 1998), the Minnesota Supreme Court recognized the tort of public disclosure of private facts as defined in Restatement (Second) of Torts § 652D:

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that

- (a) would be highly offensive to a reasonable person, and



(b) is not of legitimate concern to the public.

The disclosure has to be a public disclosure. "Publicity," which is a required element of the tort, differs from the publication element in defamation cases. "Publicity" contemplates making a matter public, "by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge." Restatement (Second) of Torts § 652D cmt. a. The Minnesota Supreme Court has adopted the Restatement approach in defining "publicity." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 557 (Minn. 2003) (dissemination of social security numbers of 204 employees to 16 terminal managers in six states does not constitute "publicity" within the meaning of the Restatement). See also *Bauer v. Ford Motor Credit Co.*, 140 F.Supp.2d 1019, 1023 (D.Minn. 2001), vac'd in part on other grounds, 149 F.Supp.2d 1106 (D.Minn. 2001) (publication of information concerning plaintiffs' marriage and finances to four neighbors or relatives and one employer by debt collector inadequate to meet the publicity requirement); *Robins v. Conseco Finance Loan Co.*, 656 N.W.2d 241, 246 (Minn. Ct. App. 2003) (disclosure by defendant lender of credit information about the plaintiff, a prospective purchaser of a manufactured home, to the prospective seller, who was a co-employee of the plaintiff, in violation of company policy, held insufficient publicity to establish an action for publication of private facts).

Unlike the torts of intrusion upon one's seclusion and appropriation, the public disclosure tort imposes liability on a defendant for giving publicity to true information about the plaintiff. Constitutional problems may arise whenever a state imposes liability for the publication of true information. At a minimum, the First Amendment prohibits the imposition of liability for the public disclosure of public record information that is lawfully obtained. See *Florida Star v. B.J.F.*, 491 U.S. 524, 532–533, 109 S.Ct. 2603, 2608–2609, 105 L.Ed.2d 443 (1989); *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 103, 99 S.Ct. 2667, 2671, 61 L.Ed.2d 399 (1979); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491, 95 S.Ct. 1029, 1044, 43 L.Ed.2d 328 (1975), as well as the publication of illegally intercepted but true information provided to a media defendant. See *Bartnicki v. Vopper*, 532 U.S. 514, 532–33, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001). In *Gates v. Discovery Communications, Inc.*, 34 Cal.4th 679, 21 Cal.Rptr.3d 663, 101 P.3d 552, 561–62 (2004), the California Supreme Court held that the decisions of the United States Supreme Court also precluded a public disclosure privacy claim for the reckless publication of true but not newsworthy facts where liability would be based on the publication of true information obtained from official court records.

The Restatement takes the position that where "the subject-matter of the publicity is a matter of legitimate public concern, there is no invasion of privacy." Restatement (Second) of Torts § 652D cmt. d (1977). There may also be a constitutional privilege to publish true information that is a matter of legitimate public concern. See, e.g., *Shulman v.*

*Group W Productions, Inc.*, 18 Cal.4th 200, 74 Cal.Rptr.2d 843, 955 P.2d 469, 483–8 (1998). Public disclosure privacy actions by public officials and figures will also be limited. Restatement (Second) of Torts § 652D cmt. e (1977).

In *Yath v. Fairview Clinics, N.P.*, 767 N.W.2d 34 (Minn. Ct. App. 2009), information from medical records was posted on a MySpace.com webpage. Only a small number of people viewed the web page and it was open for only 24 to 48 hours. The court held that the publicity requirement was satisfied. “Publicity” as defined in the Restatement (Second) of Torts § 652 cmt. a (1977) and accepted by the Supreme Court of Minnesota in *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 557 (Minn.2003), means that “the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.” The court of appeals held that “the publicity element of an invasion-of-privacy claim is satisfied when private information is posted on a publicly accessible Internet website.” *Yath*, 767 N.W.2d at 44.

#### Research References

*West's Key Number Digest*  
Torts ◊350, 381

**CIVJIG 72.25****INVASION OF PRIVACY—DAMAGES****Factors to consider in deciding damages for invasion of privacy**

Damages for invasion of privacy include actual harm directly caused by the invasion of privacy for:

1. Mental distress
2. Humiliation
3. Embarrassment
4. Physical disability
5. Special damages
6. [Deprivation of the interest in seclusion]\*
7. [Injury to reputation]\*\*

---

**USE NOTE**

This instruction is based upon Restatement (Second) of Torts § 652H (1976), which covers damages in invasion of privacy actions. Note, however, that the Minnesota Supreme Court has not yet adopted section 652H. Because it is unclear whether Minnesota would permit the award of presumed damages in invasion of privacy cases, this instruction, coupled with the special verdict forms on invasion of privacy, require actual damages.

This instruction is intended for use only in cases involving claims for intrusion and public disclosure of private facts. It does not include damages for the commercial appropriation of one's name or likeness. See CIVJIG 72.15, Use Note and Authorities for a discussion of the problems involved in determining damages for commercial appropriation.

\* This bracketed part of the instruction would be used only if the court determines that it is an appropriate element of damages to be awarded in an intrusion case, pursuant to Restatement (Second) of Torts § 652H(a) (1976).

\*\* This bracketed part of the instruction would be used if the court



determines that injury to reputation is an appropriate element of damages to be awarded in a public disclosure case, pursuant to Restatement (Second) of Torts § 652H(a) (1976).

If there is a claim for special damages, the pattern instruction in CIVJIG 50.60 may be used.

### AUTHORITIES

Restatement (Second) of Torts § 652H (1977) reads as follows:

One who has established a cause of action for invasion of his privacy is entitled to recover damages for

(a) the harm to his interest in privacy resulting from the invasion;

(b) his mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and

(c) special damage of which the invasion is a legal cause.

The Minnesota courts have not yet adopted section 652H, although a majority of courts that have addressed the issue have done so. See *Rohrbaugh v. Wal-Mart Stores, Inc.*, 212 W.Va. 358, 572 S.E.2d 881, 887 (W. Va. 2002). A minority of courts have not limited recovery to the Restatement formulation but have permitted recovery for nominal damages also. See *Rohrbaugh*, 572 S.E.2d at 887.

The plaintiff should not have to establish the separate elements of intentional infliction of emotional distress in order to recover damages for emotional distress caused by the invasion of privacy. *Fischer v. Hooper*, 143 N.H. 585, 732 A.2d 396, 401–02 (1999). It seems likely that Minnesota would take the same position, although the Minnesota courts have not yet said so. See *Lickteig v. Alderson, Ondov, Leonard & Sween, P.A.*, 556 N.W.2d 557, 560 (Minn. 1996) (plaintiffs may recover damages for emotional distress where there is a “direct invasion” of the rights of the plaintiff in cases such as defamation, malicious prosecution, or other like willful or malicious conduct, citing *State Farm Mut. Auto. Ins. Co. v. Village of Isle*, 265 Minn. 360, 368, 122 N.W.2d 36, 41 (1963)).

It is less clear whether Minnesota would permit damages for invasion of the privacy interest itself under section 652H(a). The comments to section 652H explain part (a):

A cause of action for invasion of privacy, in any of its four forms, entitles the plaintiff to recover damages for the harm to the particular element of his privacy that is invaded. Thus one who suffers an intrusion upon his solitude or seclusion, under § 652B, may recover damages for the deprivation of his seclusion. One whose name,



likeness or identity is appropriated to the use of another, under § 652C, may recover for the loss of the exclusive use of the value so appropriated. One to whose private life publicity is given, under § 652D, may recover for the harm resulting to his reputation from the publicity.

Restatement (Second) of Torts § 652H cmt. a (1977).

One of the issues that arises in determining damages for invasion of privacy is whether damages may be awarded for injury to the privacy interest itself, apart from any emotional harm the invasion may cause. Comment a to section 652H states that “[a] cause of action for invasion of privacy . . . entitles the plaintiff to recover damages for the harm to the particular element of his privacy that is invaded.” A plaintiff who establishes the tort of intrusion upon seclusion “may recover damages for the deprivation of his seclusion.” Appropriation justifies recovery “for the loss of the exclusive use of the value so appropriated.” Public disclosure justifies recovery for “the harm resulting to his reputation from the publicity.” The comment has been interpreted as intending to incorporate a claim for presumed damages for violation of the right to privacy. *See* Jacob A. Stein, Stein on Personal Injury Damages § 5:46 n.53 (3d ed.).

#### Research References

*West's Key Number Digest*

Damages ⇨20, 57.1, 57.19, 88, 102, 140.7

*Legal Encyclopedias*

C.J.S., Damages §§ 28 to 29, 34 to 37, 164, 198 to 201

## SPECIAL VERDICT FORMS

## CIVSVF 72.90

## INVASION OF PRIVACY—INTRUSION

1. Did (defendant) interfere with (plaintiff's) (solitude) (seclusion) (private concerns or affairs)?

\_\_\_\_\_  
Yes or No

2. *If your answer to Question 1 was "Yes," then answer this Question:* Did (defendant) do so intentionally?

\_\_\_\_\_  
Yes or No

3. *If your answer to Question 2 was "Yes," then answer this Question:* Did (plaintiff) have a reasonable expectation of privacy in his or her (solitude) (seclusion) (private concerns or affairs)?

\_\_\_\_\_  
Yes or No

4. *If your answer to Question 3 was "Yes," then answer this Question:* Did this intrusion occur in a way that would be highly offensive to a reasonable person in that position?

\_\_\_\_\_  
Yes or No

*[If you answered "Yes" to Question 4, then answer Questions 5 and 6.]*

5. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the intrusion up to the time of this verdict for:

- a. Mental distress \$ \_\_\_\_  
b. Past wage loss \$ \_\_\_\_  
c. Past healthcare expenses \$ \_\_\_\_

6. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by the intrusion for:

- a. Future mental distress \$ \_\_\_\_

- b. Loss of future earning capacity \$ \_\_\_\_
- c. Future healthcare expenses \$ \_\_\_\_

---

**USE NOTE**

This special verdict form is based on Restatement (Second) of Torts § 652B (1977). The damages portion of the verdict form is based on section 652H of the Restatement. Section 652H provides that damages may be awarded for:

- (a) the harm to his interest in privacy resulting from the invasion;
- (b) his mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and
- (c) special damage of which the invasion is a legal cause.

The verdict form does not include part (a), which appears to be intended to permit recovery for presumed damages. That part would be applicable in cases where there are no actual damages for mental distress caused by the invasion of privacy.

The questions in this special verdict form correspond with the following jury instructions.

- 1. CIVJIG 72.10: Intrusion upon Seclusion.
- 2. CIVJIG 72.10: Intrusion upon Seclusion.
- 3. CIVJIG 72.10: Intrusion upon Seclusion.
- 4. CIVJIG 72.10: Intrusion upon Seclusion.
- 5a. CIVJIG 91.10: Items of Personal Damage—Past Damages—Bodily and Mental Harm.
- 5b. CIVJIG 91.20: Items of Personal Damage—Past Damages—Loss of Earnings.
- 5c. CIVJIG 91.15: Items of Personal Damage—Past Damages—Medical Supplies, Hospital and Medical Expenses.
- 6a. CIVJIG 91.25: Items of Personal Damage—Future Damages—Bodily and Mental Harm.
- 6b. CIVJIG 91.35: Items of Personal Damage—Future Damages—Loss of Earning Capacity.

- 6c. CIVJIG 91.30: Items of Personal Damage—Future Damages—Medical Supplies, Hospital, and Medical Expenses.



## CIVSVF 72.91

## INVASION OF PRIVACY—APPROPRIATION

1. Did (defendant) appropriate (plaintiff's) name or likeness?

\_\_\_\_\_  
Yes or No

2. *If your answer to Question 1 was "Yes," then answer this Question:* for (his) (her) own use or benefit?

\_\_\_\_\_  
Yes or No

*If you answered "Yes" to Question 2, then answer Questions 3 and 4.*

3. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the appropriation up to the time of this verdict for:

- a. Mental distress \$ \_\_\_\_\_  
b. Past wage loss \$ \_\_\_\_\_  
c. Past healthcare expenses \$ \_\_\_\_\_

4. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by the appropriation for:

- a. Future mental distress \$ \_\_\_\_\_  
b. Loss of future earning capacity \$ \_\_\_\_\_  
c. Future healthcare expenses \$ \_\_\_\_\_

\_\_\_\_\_  
USE NOTE

This special verdict form is based on Restatement (Second) of Torts § 652C (1977). The damages portion of the verdict form is based on section 652H of the Restatement. Section 652H provides that damages may be awarded for:

- (a) the harm to his interest in privacy resulting from the invasion;

(b) his mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and

(c) special damage of which the invasion is a legal cause.

The verdict form does not include part (a), which appears to be intended to permit recovery for presumed damages. It would be applicable in cases where there are no actual damages for mental distress caused by the invasion of privacy.

The questions in this special verdict form correspond with the following jury instructions.

1. CIVJIG 72.15: Appropriation.

2. CIVJIG 72.10: Intrusion Upon Seclusion.

3a. CIVJIG 91.10: Items of Personal Damage—Past Damages—Bodily and Mental Harm.

3b. CIVJIG 91.20: Items of Personal Damage—Past Damages—Loss of Earnings.

3c. CIVJIG 91.15: Items of Personal Damage—Past Damages—Medical Supplies, Hospital and Medical Expenses.

4a. CIVJIG 91.25: Items of Personal Damage—Future Damages—Bodily and Mental Harm.

4b. CIVJIG 91.35: Items of Personal Damage—Future Damages—Loss of Earning Capacity.

4c. CIVJIG 91.30: Items of Personal Damage—Future Damages—Medical Supplies, Hospital, and Medical Expenses.

## CIVSVF 72.92

INVASION OF PRIVACY—PUBLICATION OF  
PRIVATE FACTS

1. Did (defendant) disclose facts about (plaintiff)?

\_\_\_\_\_  
Yes or No

2. *If your answer to Question 1 was "Yes," then answer this Question:* Were those facts private before the disclosure?

\_\_\_\_\_  
Yes or No

3. *If your answer to Question 2 was "Yes," then answer this Question:* Were those facts communicated to the public at large?

\_\_\_\_\_  
Yes or No

4. *If your answer to Question 3 was "Yes," then answer this Question:* Would the facts disclosed be highly offensive to a reasonable person?

\_\_\_\_\_  
Yes or No

*[If you answered "Yes" to Question 4, then answer Questions 5 and 6.]*

5. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the publication of private facts up to the time of this verdict for:

- a. Past injury to reputation      \$ \_\_\_\_
- b. Past mental distress      \$ \_\_\_\_
- c. Past wage loss      \$ \_\_\_\_
- d. Past healthcare expenses      \$ \_\_\_\_

6. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by the publication of private facts for:

- a. Future injury to reputation      \$ \_\_\_\_
- b. Future mental distress      \$ \_\_\_\_
- c. Loss of future earning capacity      \$ \_\_\_\_

- d. Future healthcare ex- \$\_\_\_\_  
penses

---

### USE NOTE

This special verdict form is based on Restatement (Second) of Torts § 652D (1977). The damages portion of the verdict form is based on section 652H of the Restatement. Section 652H provides that damages may be awarded for:

(a) the harm to his interest in privacy resulting from the invasion;

(b) his mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and

(c) special damage of which the invasion is a legal cause.

The verdict form does not include part (a), which appears to be intended to permit recovery for presumed damages. It would be applicable in cases where there are no actual damages for mental distress caused by the invasion of privacy.

The questions in this special verdict form correspond with the following jury instructions.

1. CIVJIG 72.20: Public Disclosure of Private Facts.
2. CIVJIG 72.20: Public Disclosure of Private Facts.
3. CIVJIG 72.20: Public Disclosure of Private Facts.
4. CIVJIG 72.20: Public Disclosure of Private Facts.
- 5a. There is no instruction covering injury to reputation.
- 5b. CIVJIG 91.10: Items of Personal Damage—Past Damages—Bodily and Mental Harm.
- 5c. CIVJIG 91.20: Items of Personal Damage—Past Damages—Loss of Earnings.
- 5d. CIVJIG 91.15: Items of Personal Damage—Past Damages—Medical Supplies.
- 6a. There is no instruction covering injury to reputation.
- 6b. CIVJIG 91.25: Items of Personal Damage—Future Damages—Bodily and Mental Harm.



6c. CIVJIG 91.35: Items of Personal Damage—Future Damages—Loss of Earning Capacity.

6d. CIVJIG 91.30: Items of Personal Damage—Future Damages—Medical Supplies, Hospital, and Medical Expenses.



## CATEGORY 75

### PRODUCTS LIABILITY

---

#### *Table of Instructions*

CIVJIG 75.10	Defendant in Business of Selling or Leasing
CIVJIG 75.15	Defect Must Have Existed When it Left Seller
CIVJIG 75.20	Design Defect
CIVJIG 75.25	The Duty to Warn (Strict Liability and Negligence)
CIVJIG 75.26	Sophisticated Intermediaries
CIVJIG 75.30	Manufacturing Defects
CIVJIG 75.31	Intermediaries Other Than Manufacturers
CIVJIG 75.32	Proof of Defect—Circumstantial Evidence
CIVJIG 75.35	Liability of Manufacturer or Seller of Goods—Negligence
CIVJIG 75.40	Manufacturer's Duty to Provide Post-Sale Warnings
CIVJIG 75.45	Bailments
CIVJIG 75.50	Causation
CIVJIG 75.55	Useful Life
CIVJIG 75.60	Food
CIVJIG 75.65	Strict Liability—Avoidance

#### SPECIAL VERDICT FORMS

CIVSVF 75.90	Design Defect and Inadequate Warning Theories (Single plaintiff and Single defendant)
CIVSVF 75.92	Manufacturing Defect Theory (Single plaintiff and Single defendant)
CIVSVF 75.94	Liability Asserted Against Manufacturer and Other Seller Based on Design Defect (Single plaintiff, Multiple defendants)
CIVSVF 75.95	Liability Asserted Only Against Intermediary—Manufacturer Not in Suit (Single plaintiff and Single Intermediary Other Than Manufacturer)
CIVSVF 75.96	Design Defect Asserted Against Manufacturer and Component Parts Manufacturer (Single plaintiff, Product Manufacturer, and Component Parts Manufacturer)
CIVSVF 75.98	Liability of Product Manufacturer Based on Design Defect and Inadequate Warnings and plaintiff's Employer (Single plaintiff, Single

## Manufacturer, and plaintiff's Employer)

## INTRODUCTORY NOTE

The Minnesota Supreme Court adopted strict liability in tort in *McCormack v. Hankschaft Co.*, 278 Minn. 322, 339-40, 154 N.W.2d 488, 500-501 (1967). The court indicated its intent to adopt the Restatement (Second) of Torts § 402A (1965) as the basic strict liability formulation to be used in Minnesota. See, e.g., *Olson v. Village of Babbitt*, 291 Minn. 105, 110, 189 N.W.2d 701, 705 (1971); *Lee v. Crookston, Coca-Cola Bottling Co.*, 290 Minn. 321, 328-329, 188 N.W.2d 426, 432 (1971); *Farr v. Armstrong Rubber Co.*, 288 Minn. 83, 89, 179 N.W.2d 64, 68 (1970). In 1984, however, the court reformulated the standard for design defect and failure to warn cases by applying negligence principles to those claims. See *Bilotta v. Kelley Co.*, 346 N.W.2d 616, 622 (Minn. 1984) (design defect must be evaluated according to a risk-utility standard); *Germann v. F.L. Smithe Machine Co.*, 395 N.W.2d 922, 926, n. 4 (Minn. 1986) (negligence principles apply to strict liability failure to warn claims). However, in a case involving a manufacturing flaw, it is appropriate to submit both strict liability and negligence claims.

**Elements of a Products Liability Claim.** There are three basic elements in a products liability case. First, the defendant's product must have been in a defective condition unreasonably dangerous for its intended use. Second, the defect must have existed when the product left the defendant's control. Third, the defect must have been the proximate cause of the injury sustained. See *Bilotta v. Kelley Co.*, 346 N.W.2d 616, 623, n. 3 (Minn. 1984); *Aby v. St. Paul Union Stockyards*, 373 N.W.2d 810, 812 (Minn. Ct. App. 1985); *Smits v. E-Z Por Corp.*, 365 N.W.2d 352, 354 (Minn. Ct. App. 1985). These elements are common to strict liability, negligence, and breach of implied warranty claims, *Worden v. Gangelhoff*, 308 Minn. 252, 254-255, 241 N.W.2d 650, 651 (1976), although in design defect and failure to warn claims, the plaintiff should be entitled to assert only a single theory of recovery. *Bilotta*, 346 N.W.2d at 623; *Hauenstein v. The Loctite Corp.*, 347 N.W.2d 272, 275 (Minn. 1984). Implied warranty of merchantability theory is also merged with strict liability and negligence in a single theory of recovery. *Piotrowski v. Southworth Products Corp.*, 15 F.3d 748 (8th Cir. 1994) (citing *Westbrock v. Marshalltown Mfg. Co.*, 473 N.W.2d 352, 356 (Minn. Ct. App. 1991); *Gross v. Running*, 403 N.W.2d 243, 245 (Minn. Ct. App. 1987), and noting that those cases cited *Bilotta* for the merger proposition, even though *Bilotta* did not specifically hold that implied warranty theory was merged with strict liability and negligence).

**Plaintiffs Entitled to Sue in Strict Liability.** Strict liability extends to product users and consumers, see *Holm v. Sponco Mfg., Inc.*, 324 N.W.2d 207 (Minn. 1982); *McCormack v. Hankschaft Co.*, 278 Minn. 322, 154 N.W.2d 488 (1967), and to anyone who may be foreseeably injured by the product, see *Hauenstein v. The Loctite Corp.*, 347 N.W.2d 272, 275 (Minn. 1984); *Bilotta v. Kelley Co., Inc.*, 346 N.W.2d 616, 621 (Minn. 1984).



**The defendant Must Be a Product Seller or Distributor.** The Restatement (Third) of Torts: Products Liability § 1 cmt. c, notes that products liability theory applies only to those in the business of selling:

The rule stated in this Section applies only to manufacturers and other commercial sellers and distributors who are engaged in the business of selling or otherwise distributing the type of product that harmed the plaintiff. The rule does not apply to a noncommercial seller or distributor of such products. Thus, it does not apply to one who sells foodstuffs to a neighbor, nor does it apply to the private owner of an automobile who sells it to another.

It is not necessary that a commercial seller or distributor be engaged exclusively or even primarily in selling or otherwise distributing the type of product that injured the plaintiff, so long as the sale of the product is other than occasional, or casual. Thus, the rule applies to a motion picture theater's routine sales of popcorn or ice cream, either for consumption on the premises or in packages to be taken home. Similarly, a service station that does mechanical repair work on cars may also sell tires and automobile equipment as part of its regular business. Such sales are subject to the rule in this Section. However, the rule does not cover occasional sales (frequently referred to as "casual sales") outside the regular course of the seller's business. Thus, an occasional sale of surplus equipment by a business does not fall within the ambit of this rule. Whether a defendant is a commercial seller or distributor within the meaning of this Section is usually a question of law to be determined by the court.

### **The defendant Must Be a Product Seller or Distributor**

In Minnesota, strict liability has been applied to various product sellers, including manufacturers and other product distributors. *See, e.g., Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149 (Minn. 1982); *O'Laughlin v. Minnesota Natural Gas Co.*, 253 N.W.2d 826 (Minn. 1977); *Sorenson v. Safety Flate, Inc.*, 298 Minn. 353, 216 N.W.2d 859 (1974). In *Tabish v. Target Corp.*, 2011 WL 2519209, \*6 (Minn. Ct. App. 2011), the Minnesota Court of Appeals held that an assembler of a bicycle could not be held liable under a strict liability theory, noting that strict liability claims are traditionally enforceable only against manufacturers, suppliers, and sellers of products.

In *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 387 (Minn. Ct. App. 2004), the court of appeals noted section 1 in holding that a grain bank that manufactured and supplied animal feed to grain bank depositors and others, could be considered a seller for products liability purposes when the feed consisted in part of deposited corn.

However, Minnesota exempts from strict liability theory product defendants other than product manufacturers, if the manufacturer is known, solvent, and subject to personal jurisdiction in Minnesota, and

not dismissed because an applicable statute of limitations has run. M.S.A. § 544.41, subd. 2 (2014), holds other sellers liable if the manufacturer is not subject to liability for those reasons. See *Marcon v. Kmart Corp.*, 573 N.W.2d 728, 730 (Minn. Ct. App. 1998).

While M.S.A. § 544.41 (1998) provides that defendants other than the product manufacturer are entitled to dismissal of strict liability claims against them if the manufacturer is solvent and subject to jurisdiction in Minnesota, subdivision 3 contains specific exceptions that prevent those defendants from avoiding the strict liability claims if the plaintiff proves:

(a) That the defendant has exercised some significant control over the design or manufacture of the product, or has provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the injury, death or damage;

(b) That the defendant had actual knowledge of the defect in the product which caused the injury, death or damage; or

(c) That the defendant created the defect in the product which caused the injury, death or damage.

M.S.A. § 544.41, subd. 3.

**The Transaction Must Be a Sale or Equivalent Transaction.**

Minnesota products liability law has been applied to a variety of product sellers and distributors engaging in various transactions equivalent to a sale of a product. The supreme court has applied products liability principles to leases of defective products, *Clark v. Rental Equip. Co.*, 300 Minn. 420, 426, 220 N.W.2d 507, 511 (1974) (scaffolding without a safety railing); *Rediske v. Minnesota Valley Breeder's Ass'n*, 374 N.W.2d 745, 749 (Minn. Ct. App. 1985), rev. granted, 377 N.W.2d 459 (Minn. Dec.11, 1985), dismissed May 15, 1986 (defective solid animal waste recycling system); and bailments, *Butler v. Northwestern Hospital of Minneapolis*, 202 Minn. 282, 285, 278 N.W. 37, 38 (1938) (hot water burns sustained by plaintiff-patient due to defect in clamp in proctoclysis delivery system).

In *McCarthy Well Co. v. St. Peter Creamery, Inc.*, 410 N.W.2d 312 (Minn. 1987), the supreme court applied a "predominant factor" test to determine whether a transaction is a sales or service transaction:

We conclude that the predominant purpose of the McCarthy Well-St. Peter Creamery contract was the provision of services. The creamery hired McCarthy Well to restore the creamery's artesian well to its original capacity. Toward this end, McCarthy Well pulled a liner out of the well casing, airlifted sand out of the well, televised the well, attempted to remove a donut from the well casing, exploded dynamite at the bottom of the well, and installed a new pump. After installing the pump, McCarthy Well billed the

creamery \$34,573.27; of this amount, only \$8,329.45 is identified as the cost of the new pump.

410 N.W.2d at 315.

**The Requirement of a Product.** For products liability principles to apply, there must be a product. *Harmon Contract Glazing, Inc. v. Libby-Owens-Ford Co.*, 493 N.W.2d 146, 149–150 (Minn. Ct. App. 1992), rev. denied (Minn. Feb. 12, 1993) (bracing system used to ship glass panes was not a product; product liability instructions were therefore inappropriate because of the more stringent duty imposed on product manufacturers).

The Restatement (Third) of Torts: Products Liability § 19 (1997) defines “product” as follows:

(a) A product is tangible personal property distributed commercially for use or consumption. Other items, such as real property and electricity, are products when the context of their distribution and use is sufficiently analogous to the distribution and use of tangible personal property that it is appropriate to apply the rules stated in this Restatement.

(b) Services, even when provided commercially, are not products.

(c) Human blood and human tissue, even when provided commercially, are not subject to the rules of this Restatement.

The question of what is a product is a question of law for the court. Restatement (Third) of Torts: Products Liability § 19 cmt. a. For example, in *Harmon Contract Glazing, Inc. v. Libby-Owens-Ford Co.*, 493 N.W.2d 146 (Minn. Ct. App. 1992), rev. denied (Minn. Feb. 12, 1993), the court of appeals held that packaging used to ship glass panes was not a product.

**Open and Obvious Dangers.** A plaintiff should *not* have to prove lack of awareness of a defect in order to recover in a design defect or failure to warn case, although the cases are somewhat in confusion on the issue. *Compare Rients v. International Harvester Co.*, 346 N.W.2d 359 (Minn. Ct. App. 1984), and *McCormick v. Custom Pools, Inc.*, 376 N.W.2d 471 (Minn. Ct. App. 1985), with *Jonathan v. Kvaal*, 403 N.W.2d 256 (Minn. Ct. App. 1987). *Rients* and *McCormick* appear to resurrect the supreme court’s decision in *Magnuson v. Rupp Mfg., Inc.*, 285 Minn. 32, 40, 171 N.W.2d 201, 207 (1969), where the court stated that in a strict liability case, the “plaintiff must not be aware of the defect in order to recover.” That aspect of *Magnuson* has been discredited. As the court of appeals noted in *Jonathan*:

To rely on *McCormick* is to rely on *Magnuson v. Rupp Manufactur-*



*ing, Inc.* . . . for the rule that if one is aware of the danger in the use of the product, there is no liability. Neither *McCormick* nor *Magnuson* is applicable here . . . and both cases are distinguishable in light of *Holm v. Sponco Manufacturing, Inc.* . . .

*Jonathan*, 403 N.W.2d at 260.

In *Holm*, the supreme court rejected a latent-patent danger distinction for design cases, making obviousness of the danger a factor to consider in determining whether a product is defective. *Holm v. Sponco Mfg. Inc.*, 324 N.W.2d 207, 213 (Minn. 1982). Obviousness of a danger may relate to the seller's obligation to warn or the user's contributory negligence, but it should not be an automatic bar to a design defect claim. Where the question of contributory negligence (secondary assumption of risk) is in issue, see CIVJIG 28.25.

In general, the Minnesota courts have taken the position that there is no duty to warn in cases where the danger is obvious. *Mix v. MTD Products, Inc.*, 393 N.W.2d 18, 19-20 (Minn. Ct. App. 1986) (Noting that *Holm*, which states that obviousness of the risk is only one factor to consider in a design defect case, does not apply in a failure to warn case. 393 N.W.2d at 20, n.2.); *Willmar Poultry Co. v. Carus Chemical Co.*, 378 N.W.2d 830, 835 (Minn. Ct. App. 1985). Also, there is no duty to warn sophisticated users. See, e.g., *Minneapolis Soc'y of Fine Arts v. Parker-Klein Associates Architects, Inc.*, 354 N.W.2d 816, 821 (Minn. 1984); *Todalen v. United States Chemical Co.*, 424 N.W.2d 73, 80 (Minn. Ct. App. 1988), overruled on other grounds by *Tyroll v. Private Label Chemicals, Inc.*, 505 N.W.2d 54 (Minn. 1993).

**Property Damage and Economic Loss.** The Minnesota Supreme Court has limited the application of strict tort liability and negligence theories of recovery. In *Superwood Corp. v. Siempelkamp Corp.*, 311 N.W.2d 159 (Minn. 1981), the court stated that the "economic losses that arise out of commercial transactions, except those involving personal injury or damage to other property, are not recoverable under the tort theories of negligence or strict products liability." 311 N.W.2d at 162. In *S.J. Groves and Sons Co. v. Aerospatiale Helicopter Corp.*, 374 N.W.2d 431 (Minn. 1985), overruled on other grounds, *Hapka v. Paquin Farms*, 458 N.W.2d 683 (Minn. 1990), a case certified to the supreme court from the United States District Court for the District of Minnesota, the court considered the application of *Superwood* to a case involving a helicopter crash that resulted in minor damage to other property, as well as the death of the pilot and injuries to a passenger. Distinguishing *Superwood*, where the court held that recovery in tort is permitted for economic losses that arise out of personal injury or damage to other property, the court said that in the instant case, although personal injury was involved, the plaintiff sought recovery for "economic loss arising only from damage to the product itself, not from the personal injury." 374 N.W.2d at 433. Because the plaintiff was seeking recovery for the failure of the product to live up to its expectations as to its suitability, quality, and performance, even though a tort injury arose out of



the use of the product, the plaintiff lost only what it purchased. The court concluded that the type of damage, to the product itself, is ordinarily not recoverable in tort. Rather, such damages are the type covered by warranty law and the Uniform Commercial Code. 374 N.W.2d at 434.

The court also relied on the fact that the claim for economic loss was made by a commercial plaintiff with economic bargaining power substantially equivalent to the seller's. The claimant therefore had the opportunity to bargain with the seller as to the product's specifications and the risk of loss from defects in the product. 374 N.W.2d at 434. Finally, the court rejected the claimant's argument that the conflict between tort and contract should be resolved by permitting tort recovery when the loss results from a "sudden and calamitous occurrence," rather than a "qualitative defect" in the product. While the court rejected the distinction, 374 N.W.2d at 435, it also stated that "[w]e do not by this decision \* \* \* wholly foreclose future consideration of the proposed distinction if presented in other, more compelling circumstances than presented in this case." 374 N.W.2d at 435.

In *80 South Eighth Street Limited Partnership v. Carey-Canada, Inc.*, 486 N.W.2d 393 (Minn. 1992), amended 492 N.W.2d 256 (Minn. 1992), the supreme court, on certified questions from the United States District Court for the District of Minnesota, held that the economic loss doctrine of *Superwood v. Siempelkamp*, 311 N.W.2d 159 (Minn. 1981), and *Hapka v. Paquin Farms*, 458 N.W.2d 683 (Minn. 1990), does not bar the owner of a building with fireproofing that contains asbestos from recovering against the manufacturer and supplier under tort theories of negligence and strict liability for "damages relating to the maintenance, removal and replacement" of the fireproofing. 486 N.W.2d at 398.

The court distinguished *Hapka* because the court's rationale in that case supported a definition of economic loss predicated on the failure of a product to perform as promised.

The underlying assumption in *Hapka*, as in all our cases of economic loss, is that commercial parties bring their experiences in the marketplace to the negotiations; that their reasonable contemplation is embodied in the transaction; that at the time of the contract formation they have defined the product, identified the risks, and negotiated a price of the goods that reflects the relative benefits and risks to each party.

486 N.W.2d at 396.

In *Lloyd F. Smith Co. v. Den-Tal-Ez, Inc.*, 491 N.W.2d 11, 15-16 (Minn. 1992), the court placed *Hapka* in context:

When . . . the defective product causes damage to "other property,"

the risk-of-loss dynamics change subtly. In *Seely* and *Superwood*, as we pointed out in *Hapka*, there was no claim made for damage to other property . . . . It is against this background that *Hapka* must be understood. In *Hapka* there was a claim for other property damaged by the defective product. The seller sold the buyer seed potatoes which proved to be diseased, with the disease spreading to other seed potatoes also planted by the buyer. The buyer sought property damages not only for loss of the defective potatoes, but also for damages for loss of other property, i.e., for loss of his other healthy seed potatoes which became infected. We held the buyer was limited to his Code remedy, stressing that the seller and buyer were both knowledgeable dealers in seed potatoes and of relatively equal bargaining power. In short, this was a classic case of a sale between merchants in goods of the kind where, we said, the Code exclusively governs even as to other property. Significantly, however, we noted that some "other property" claims caused by a defective product remained recoverable in tort. For example, if a defective coffee pot starts a fire which burns down a building, the coffee pot purchaser could sue in tort as well as in breach of warranty for damages to the building. In such a case . . . the customer was a consumer lacking the bargaining status of the purchaser in a classic commercial transaction, and should be allowed the "panoply" of legal remedies . . . .

In other words, if the buyer of a defective product is not a merchant dealing with another merchant in goods of the kind, the buyer is not precluded from suing in tort as well as contract for damage to his other property. When the property damaged is not the property that was the subject of the sale . . . allowing tort liability in these cases does not undermine the Code's primary role in regulating risk of loss of the defective product itself.

Even more so, then, should third parties who sustain property damage because of a defect in someone else's product, be entitled to sue in tort. There is no good reason not to be able to do so. The third party may or may not be in privity with the buyer; it all depends on whether the loss could reasonably have been expected to involve the third party. But even if there is privity and a breach of warranty claim would lie, these ties of privity are not so close to the basic sales transaction as to justify denial of a concurrent tort remedy. The third party's damaged property was not the subject of the sale to which the defendant seller was a party, nor was the third party in any way a participant in the contractual arrangements involving the defective product.

In 1991, the legislature approved M.S.A. § 604.10, covering economic loss arising from the sale of goods. That section reads as follows:

(a) Economic loss that arises from a sale of goods that is due to damage to tangible property other than the goods sold may be recovered in tort as well in contract, but economic loss that arises

from a sale of goods between parties who are each merchants in goods of the kind is not recoverable in tort.

(b) Economic loss that arises from a sale of goods, between merchants, that is not due to damage to tangible property other than the goods sold may not be recovered in tort.

(c) The economic loss recoverable in tort under this section does not include economic loss due to damage to the goods themselves.

(d) The economic loss recoverable in tort under this section does not include economic loss incurred by a manufacturer of goods arising from damage to the manufactured goods and caused by a component of the goods.

Subpart (d) was added in 1993. In 1998, the legislature again amended the statute, adding a new subpart (e) and sections 2–4. The amendment is as follows:

(e) This section shall not be interpreted to bar tort causes of action based on fraud or fraudulent or intentional misrepresentation or limit remedies for those actions.

Sec. 2. The amendment in section 1 is intended to clarify, rather than to change, the original intent of Minnesota Statutes, section 604.10.

Sec. 3. In the next and subsequent editions of Minnesota Statutes, the revisor shall insert an annotation to Minnesota Statutes, section 336.2-721, alerting the reader to Minnesota Statutes, section 604.10, and the interrelationship of the two sections.

Sec. 4. This act is effective the day following final enactment and applies to actions pending on or commenced on or after that date.

Pursuant to the statute, the kind of economic loss that is recoverable in tort does not include damage to the product itself. Whether economic loss that arises from damage to other property is compensable depends on whether the loss “arises from a sale of goods between parties who are each merchants in goods of the kind.” If it is, then it is not recoverable in tort, leaving the injured parties to their contract remedy. If it does not arise from such a sale, then the economic loss arising from damage to other property is recoverable.

In *Regents of the University of Minnesota v. Chief Industries, Inc.*, 106 F.3d 1409 (8th Cir. 1997), the Eighth Circuit considered the application of section 604.10 in a case involving a products liability claim by the University of Minnesota for property damage allegedly caused by



a grain dryer that caught fire because of a defective solenoid. The grain dryer was manufactured by a subsidiary of Chief Industries and the solenoid was manufactured by Parker-Hannafin. The University brought suit against Chief Industries and Parker-Hannafin, alleging strict liability, failure to warn, and negligent design and manufacture. The sole issue addressed by the court was whether the University is "a merchant in goods of the kind" under the statute. The court concluded that it was unnecessary for a person to be an actual dealer of a product in order to be a "merchant in goods of the kind." Instead, the court focused on the University's specialized knowledge with respect to the grain dryer:

In the present case, the University's knowledge and experience with respect to grain dryers constituted "knowledge or skill peculiar to the practices or goods involved in the transaction." Minn.Stat. § 336.2-104(1). The University had purchased a number of such units over the prior thirty years, and had the advantage of a centralized purchasing department that solicited bids for the purchase. Before purchasing the unit, the Southwest station's superintendent (who had been responsible for other such purchases) consulted a prominent expert in grain drying, who provided advice on such specifications for the unit as fan size and BTU requirements.

To be sure, not all large, sophisticated purchasers are necessarily merchants in goods of the kind they buy, just as an informed and careful individual consumer does not become a "merchant." But based on the particular and undisputed facts of this case, we agree with the district court that the University possessed specialized knowledge with respect to the grain drying unit, and that "[t]his knowledge informed the University of the risks posed by the product and the potential damage to both the product and other property that could result from product failure." . . . The district court properly concluded that, as a matter of law, the University was a merchant of goods of the kind and that section 604.10 bars any action in tort.

106 F.3d at 1412 (citation omitted). Judge Lay dissented in the case. Based on the legislative history and relevant supreme court authority, he concluded that the University was not a merchant in goods of the kind for purposes of the statute. 106 F.3d at 1413. In *Jennie-O Foods, Inc. v. Safe-Glo Products Corp.*, 582 N.W.2d 576, 579 (Minn. Ct. App. 1998), rev. denied (Minn. Oct. 20, 1998), the court of appeals agreed with Judge Lay in holding that Jennie-O Foods, a turkey farm operator that suffered property damage in a fire caused by heaters manufactured by the defendant, was not a merchant for purposes of section 604.10 (a).

In *State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.*, 572 N.W.2d 321, 325 (Minn. Ct. App. 1997), the court of appeals held that the economic loss doctrine of section 604.10 applies to consumers as well as businesses in actions for the recovery of damages for the loss of the product itself.

In 2000, the legislature, in an attempt to clarify the economic loss doctrine in Minnesota, adopted M.S.A. § 604.101;



Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this section.

(b) "Buyer" means a person who buys or leases or contracts to buy or lease the goods that are alleged to be defective or the subject of a misrepresentation.

(c) "Goods" means tangible personal property, regardless of whether that property is incorporated into or becomes a component of some different property.

(d) "Period of restoration" means the time a reasonable person would find reasonably necessary to repair, replace, rebuild, or restore other tangible property and real property harmed by the defect in the goods to a quality level reasonably equivalent to the quality level that existed before the defect caused the harm, but excluding in all circumstances:

(1) time necessary to repair, replace, rebuild, or restore the goods themselves,

(2) delays or other impediments resulting from a difficulty in obtaining financing; and

(3) delays or other impediments resulting from zoning or environmental requirements imposed by law that did not apply to the use of the harmed property immediately before the harm occurred.

(e) "Product defect tort claim" means a common law tort claim for damages caused by a defect in the goods but does not include statutory claims. A defect in the goods includes a failure to adequately instruct or warn.

(f) "Seller" means a person who sells or leases or contracts to sell or lease the goods that are alleged to be defective or the subject of a misrepresentation.

(g) If a good is a component of a manufactured good, harm caused by the component good to the manufactured good is not harm to tangible personal property other than the component good.

Subd. 2. Scope. This section does not apply to claims for injury to the person. This section applies to any claim by a buyer against a seller for harm caused by a defect in the goods sold or leased, or for a misrepresentation relating to the goods sold or leased:

(1) regardless of whether the seller and the buyer were in privity regarding the sale or lease of the goods, and

(2) regardless of whether article 2 or article 2A of the

Uniform Commercial Code under chapter 336 governed the sale or lease that caused the seller to be a seller and buyer to be a buyer.

Subd. 3. Limits on product defect tort claims. A buyer may not bring a product defect tort claim against a seller for compensatory damages unless a defect in the goods sold or leased caused harm to the buyer's tangible personal property other than the goods or to the buyer's real property. In any claim brought under this subdivision, the buyer may recover only for:

(1) loss of, damage to, or diminution in value of the other tangible personal property or real property, including, where appropriate, reasonable costs of repair, replacement, rebuilding, and restoration;

(2) business interruption losses, excluding loss of good will and harm to business reputation, that actually occur during the period of restoration; and

(3) additional family, personal, or household expenses that are actually incurred during the period of restoration.

Subd. 4. Limits on common law misrepresentation claims. A buyer may not bring a common law misrepresentation claim against a seller relating to the goods sold or leased unless the misrepresentation was made intentionally or recklessly.

Subd. 5. Relation to common law. The economic loss doctrine applies to claims only as stated in this section. This section does not alter the elements of a product defect tort claim or a common law claim for misrepresentation.

Subd. 6. Application; effect on existing statute. This section governs claims by a buyer against a seller if the sale or lease that caused the seller to be a seller and the sale or lease that caused the buyer to be a buyer both occurred on or after August 1, 2000. Section 604.10 does not apply to a claim governed by this section.

Warranty instructions, should they be appropriate to the case, are set out in CIVJIG Category 22. While implied warranty of merchantability instructions should not be given where the instructions on design defect and failure to warn in this section are given, warranty instructions based on breach of express warranty (CIVJIG 22.10–22.20) or implied warranty of fitness for a particular purpose (CIVJIG 22.35) may be given along with these instructions, if justified by the facts. *See Piotrowski v. Southworth Products Corp.*, 15 F.3d 748, 751 (8th Cir. 1994), *citing* Civil JIG 117 (now CIVJIG 75.20), *Authorities* at 86–87 (3d ed. 1986). The same is true for instructions based on fraud or misrepresentation. The fraud instruction is set out in CIVJIG 57.10.

There are separate instructions for the primary theories of defect. There is a single instruction covering design defect in CIVJIG 75.20, and a single instruction covering failure to warn in CIVJIG 75.25. In cases involving manufacturing defects, it is appropriate to instruct on both strict liability and negligence theories, if warranted by the facts. However, the strict liability instruction in CIVJIG 75.30 should be given first, and the special verdict form should instruct the jury to consider the negligence issue only after it has found that the product is defective, pursuant to CIVJIG 75.30. *See* CIVSVF 75.92 (Manufacturing Defect Theory). The standard negligence instruction in CIVJIG 75.35 should follow the strict liability instruction. This eliminates any possibility of an inconsistent jury verdict based on a finding of negligence but no product defect.

For products liability theory to apply, the defendant must be in the business of selling the product. That question should usually be a question of law for the court to decide. CIVJIG 75.10 recommends no instruction on the issue. If there is an issue, it should be submitted according to an appropriate special verdict question.

There may also be an issue as to whether the defective condition in the product existed when the product left the seller's control. CIVJIG 75.15 recommends no instruction on that issue. If the issue arises, it should be submitted according to an appropriate special verdict question.

In cases involving design defects and failure to warn, an instruction on implied warranty of merchantability (CIVJIG 22.25) should not be given. However, if the plaintiff's theory includes express warranty (CIVJIG 22.10ff) or implied warranty of fitness for a particular purpose (CIVJIG 22.35), instructions on those theories should be appropriate. They are not preempted by the instructions in CIVJIG 75.20 or 75.25.

In cases where the plaintiff sustains damage that is not covered under the products liability theory—economic loss, for example, unaccompanied by any physical injury—warranty instructions may be appropriate, and the products liability instructions may be inappropriate to the case.

Under any theory of defect, the jury will have to be instructed on the causation issue. That instruction, common to all theories, is set out in CIVJIG 75.50.

If there is a fact question that must be submitted under M.S.A. § 544.41, CIVJIG 75.65 should be used, and the special verdict question tailored accordingly.



## CIVJIG 75.10

**DEFENDANT IN BUSINESS OF SELLING OR  
LEASING**

[The Committee recommends no instruction.]

---

**USE NOTE**

The issue of whether the defendant is in the business of selling or leasing is ordinarily a question of law for the court. If there is a fact issue as to whether the defendant is in the business of selling or leasing the product in question, the question should be submitted to the jury on an appropriate special verdict question.

**AUTHORITIES**

The defendant must be in the business of selling or leasing products in order to be subjected to the products liability rules in this section. In Minnesota, strict liability has been applied to various product sellers, including manufacturers as well as other product distributors. *See, e.g., Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149 (Minn. 1982); *O'Laughlin v. Minnesota Natural Gas Co.*, 253 N.W.2d 826 (Minn. 1977); *Sorenson v. Safety Flate, Inc.*, 298 Minn. 353, 216 N.W.2d 859 (1974). However, Minnesota exempts product defendants other than product manufacturers from strict liability theory, if the manufacturer is known, solvent, and subject to personal jurisdiction in Minnesota, and not dismissed because an applicable statute of limitations has run. M.S.A. § 544.41, subd. 2 (1996) holds other sellers liable if the manufacturer is not subject to liability for those reasons. *See Marcon v. Kmart Corp.*, 573 N.W.2d 728, 730 (Minn. Ct. App. 1998).

Restatement (Third) of Torts § 20 (1998), adopts a broad view of the types of transactions covered under the products liability principles of the Restatement:

(a) One sells a product when, in a commercial context, one transfers ownership thereto either for use or consumption or for resale leading to ultimate use or consumption. Commercial product sellers include, but are not limited to, manufacturers, wholesalers, and retailers.

(b) One otherwise distributes a product when, in a commercial transaction other than a sale, one provides the product to another either for use or consumption or as a preliminary step leading to ultimate use or consumption. Commercial nonsale product distributors include, but are not limited to, lessors, bailors, and those who



provide products to others as a means of promoting either the use or consumption of such products or some other commercial activity.

(c) One also sells or otherwise distributes a product when, in a commercial transaction, one provides a combination of products and services and either the transaction taken as a whole, or the product component thereof, satisfies the criteria in Subsection (a) or (b).

The comments explain the extension:

After the promulgation of § 402A, courts began to extend strict liability for harm caused by product defects to some nonsale commercial transactions involving the distribution of products. Rather than stretching to call these transactions “sales,” courts simply declared that the same policy objectives that supported strict liability in the sales context supported strict liability in other contexts. The first significant extension involved commercial product lessors. Although title does not pass in lease transactions, courts have reasoned that the same policy objectives that are served by holding commercial product sellers strictly liable also apply to commercial product lessors. Over time, courts have extended strict products liability to a wide range of nonsale, nonlease transactions.

Restatement (Third) of Torts § 20 cmt. a. Minnesota has applied products liability principles in cases involving sales, leases, and bailments of products.

## CIVJIG 75.15

**DEFECT MUST HAVE EXISTED WHEN IT LEFT  
SELLER**

[The Committee recommends no instruction.]

---

**USE NOTE**

In cases where there is a fact question as to whether the defective condition in the product existed when it left the control of the seller, the issue should be submitted to the jury with an appropriate special verdict question. For a particularized application in manufacturing defect cases, see CIVJIG 75.32.

**AUTHORITIES**

In *Holkestad v. Coca-Cola Bottling Co.*, 288 Minn. 249, 180 N.W.2d 860 (1970), the Minnesota Supreme Court explained how the requirement applies:

When a plaintiff has proved that he was injured by a product claimed to have been defective, and where the claimed defect is such that there is circumstantial evidence from which it can be inferred that it is more probable than not that the product was defective when it left defendant's hands, absent plaintiff's own want of care or misuse of the product, there is an evidentiary basis for submitting the issue of liability to the jury on both the theory of negligence and strict liability in tort. Of course, the factor essential to the application of *res ipsa loquitur*—that it must be the kind of event which does not occur in the absence of negligence—is a circumstance tending to prove a defect and not a prerequisite for the application of strict liability in tort. However, the inference from the circumstantial evidence taken as a whole, which we repeat is the underlying basis of the doctrine of *res ipsa*, would permit recovery against both manufacturer and retail seller on the theory of strict liability . . . .

288 Minn. at 257, 180 N.W.2d at 865–66.

**CIVJIG 75.20****DESIGN DEFECT****Manufacturer's duty as to product design**

A manufacturer has a duty to use reasonable care to design a product that is not in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (property exposed to) the product when the product:

1. Is used as intended, or
2. Is used in a way that the manufacturer could reasonably have anticipated.

**Evaluating manufacturer's design choices**

A manufacturer must keep up with knowledge and technology in the field.

A manufacturer's duty must be judged according to the knowledge and technology existing at the time the product was sold.

In deciding whether a product was in a defective condition unreasonably dangerous because of the manufacturer's design choices, consider all the facts and circumstances, including:

1. The danger presented by the product
2. The likelihood that harm will result from use of the product
3. The seriousness of the harm
4. The cost and ease of taking effective precautions to avoid that harm
5. Whether the manufacturer considered the knowledge and technology in the field

## [6. Other factors].

[A product manufacturer may not avoid its duty to design a safe product by letting others make decisions affecting the safety of the product.]

---

USE NOTE

The bracketed paragraph, stating that the manufacturer's obligation to design a safe product cannot be delegated to a third party, incorporates the Minnesota Supreme Court's holding in *Bilotta v. Kelley Co.*, 346 N.W.2d 616, 624 (Minn. 1984), appeal after remand, 358 N.W.2d 679 (1984), that "a manufacturer may not delegate its duty to design a reasonably safe product." Neither the employer's violation of OSHA regulations nor child labor laws will constitute a superseding cause. 346 N.W.2d at 625; *Keenan v. Hydra-Mac, Inc.*, 422 N.W.2d 741, 745 (Minn. Ct. App. 1988), rev'd on other grounds, 434 N.W.2d 463 (Minn. 1989). The bracketed paragraph should be used only in cases where the nondelegation problem is in issue.

**Note:** In cases where the bracketed sentence is used, it will also be inappropriate to instruct the jury on superseding cause pursuant to CIVJIG 27.20 (Superseding Cause).

In addition to the likelihood of injury, the gravity of harm if it occurs, and the cost and ease of taking precautions to avoid that harm, it may be appropriate to instruct the jury on other relevant factors. For example, in *Armentrout v. FMC Corp.*, 842 P.2d 175, 183-84 (Colo. 1992), the court noted that the following factors could be considered in determining whether the risk of a product outweighs its utility:

(1) The usefulness and desirability of the product—its utility to the user and to the public as a whole.

(2) The safety aspects of the product—the likelihood that it will cause injury and the probable seriousness of the injury.

(3) The availability of the substitute product that would meet the same need and not be as unsafe.

(4) The manufacturer's ability to eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility.

(5) The user's ability to avoid danger by the exercise of care in the use of the product.

(6) The user's anticipated awareness of the dangers inherent



in the product and their avoidability because of general public knowledge of the obvious condition of the product, or of the existence of suitable warnings or instructions.

(7) The feasibility, on the part of the manufacturer, of spreading the loss by setting the price of the product or carrying liability insurance.

In cases involving the problem of incorporation of safety devices in a machine that has multiple purposes, it is important to determine whether liability may be imposed under a design defect theory. Although the *Bilotta* court rejected an "option offer defense" in adopting the nondelegability rule, 346 N.W.2d at 624, the rejection of that rule does not automatically imply manufacturer liability. See *Westbrock v. Marshalltown Mfg. Co.*, 473 N.W.2d 352 (Minn. Ct. App. 1991), rev. denied (Minn. Sept. 13, 1991). In *Westbrock*, the court of appeals said that "a product may be sufficiently safe if a device could not feasibly be installed in a multi-purpose machine without impairing the machine's multi-purpose nature." 473 N.W.2d at 357. The court also noted that "a safety device defense may apply when the product is multi-purpose and any single safety device would impair the equipment's utility." 473 N.W.2d at 357, citing *Gross v. Running*, 403 N.W.2d 243, 247 (Minn. Ct. App. 1987), rev. denied (Minn. May 20, 1987). In cases where the design of a multiple use product is in issue, the trial court must first determine whether it is appropriate to submit the case to the jury. If so, the standard instruction on design defects is appropriate for use.

### AUTHORITIES

**Design Defect Standards.** The Minnesota Supreme Court adopted strict tort liability in *McCormack v. Hanksraft Co.*, 278 Minn. 322, 154 N.W.2d 488 (1967). Subsequent cases have established that the Restatement (Second) of Torts § 402A (1965) is the basic strict tort liability formulation in Minnesota. See *Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 156 (Minn. 1982); *Olson v. Babbitt*, 291 Minn. 105, 110, 189 N.W.2d 701, 705 (1971); *Lee v. Crookston, Coca-Cola Bottling Co.*, 290 Minn. 321, 328-29, 188 N.W.2d 426, 432 (1971). Section 402A utilizes a consumer expectation standard to determine if a product is in a defective condition unreasonably dangerous to the user, consumer, or the user's or consumer's property. For the product to be "unreasonably dangerous," it "must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics." Restatement (Second) of Torts § 402A cmt. i (1965).

In design defect cases, the supreme court has rejected the Restatement's consumer expectation standard in favor of a "reasonable care" balancing test. See *Bilotta v. Kelley Co., Inc.*, 346 N.W.2d 616, 622 (Minn. 1984), appeal after remand, 358 N.W.2d 679 (Minn. Ct. App. 1984); *Holm v. Sponco Mfg., Inc.*, 324 N.W.2d 207, 213 (Minn. 1982).

The standard to be applied in design defect cases is drawn in part from *Micallef v. Miehle Co.*, 39 N.Y.2d 376, 384 N.Y.S.2d 115, 348 N.E.2d 571 (1976):

[A] manufacturer is obligated to exercise that degree of care in his plan or design so as to avoid any unreasonable risk of harm to anyone who is likely to be exposed to the danger when the product is used in the manner for which the product was intended, . . . as well as an unintended yet reasonably foreseeable use.

What constitutes "reasonable care" will, of course, vary with the surrounding circumstances and will involve "a balancing of the likelihood of harm, and the gravity of harm if it happens, against the burden of the precaution which would be effective to avoid the harm . . . ."

39 N.Y.2d at 385-86, 384 N.Y.S.2d at 121, 348 N.E.2d at 577-78. The standard is intended to focus on whether the manufacturer acted reasonably in adopting a particular product design. *Bilotta*, 346 N.W.2d at 622.

In a special concurring opinion, Justice Simonett suggested the following standard, which is a close variation of that adopted in the majority opinion:

A product is unsafely designed if, by reason of its design, the product is in a defective condition unreasonably dangerous to the user. The manufacturer has a duty to use due care to design a product that does not create an unreasonable risk of harm to anyone who is likely to be exposed to the danger when the product is put to its intended use or to any unintended yet reasonably foreseeable use.

The reasonable care to be exercised by a manufacturer in the design of a product will depend on all the facts and circumstances, including, among others, a balancing of the likelihood of harm and the seriousness of that harm against the feasibility (sic) and burden of any precautions which would be effective to avoid the harm.

346 N.W.2d at 626, n. 2.

The design defect jury instruction is a combination of the standards suggested in the majority and concurring opinions, simplified to reflect the basic standard contained in both opinions. It is clear from the majority and concurring opinions that the critical factor in design defect cases is the risk-utility balancing approach, which focuses on the manufacturer's design choices. The ultimate issue is whether the manufacturer's design choices resulted in a product that was unreasonably dangerous to product users or their property.

The majority opinion in *Bilotta* acknowledged suggestions that

strict liability and negligence theories merge into a single theory in design defect cases. The court then stated that, "assuming proper instruction to ensure the broadest theory of recovery, a trial court could properly submit a design-defect \* \* \* case to a jury on a single theory of recovery." 346 N.W.2d at 623. Submission of a single theory of recovery would avoid the confusion and inconsistent verdicts fostered by submission of multiple and overlapping theories of recovery. See 346 N.W.2d at 623.

In instructing a jury, a trial court may want to note other factors that may be considered by the jury in determining whether a product design is unreasonably dangerous. For example, in *Armentrout v. FMC Corp.*, 842 P.2d 175, 183-184 (Colo.1992), the court noted the following factors:

- (1) The usefulness and desirability of the product—its utility to the user and to the public as a whole.
- (2) The safety aspects of the product—the likelihood that it will cause injury and the probable seriousness of the injury.
- (3) The availability of the substitute product that would meet the same need and not be as unsafe.
- (4) The manufacturer's ability to eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility.
- (5) The user's ability to avoid danger by the exercise of care in the use of the product.
- (6) The user's anticipated awareness of the dangers inherent in the product and their avoidability because of general public knowledge of the obvious condition of the product, or of the existence of suitable warnings or instructions.
- (7) The feasibility, on the part of the manufacturer, of spreading the loss by setting the price of the product or carrying liability insurance.

The court's list relies on John W. Wade, *On the Nature of Strict Tort Liability for Products*, 44 Miss. L.J. 825, 837-38 (1973). The list of factors is not intended to be exclusive. Rather, it is simply illustrative of the factors that might be considered by the trier of fact.

In *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 96 (Minn. 1987), the supreme court noted that in addition to the basic risk-utility factors, the jury was also instructed on additional factors, including the "state of the art" and the "practices of the automotive industry" at the time of the truck's sale. 407 N.W.2d at 96.



In general, a product manufacturer “has a duty to protect users of its products from foreseeable dangers.” *Whiteford v. Yamaha Motor Corp.*, 582 N.W.2d 916, 918 (Minn. 1998).

In *Thompson v. Hirano Tecseed Co., Ltd.*, 456 F.3d 805, 810 (8th Cir. 2006), an Eighth Circuit case applying Minnesota law, the Eighth Circuit noted that Minnesota has not addressed the issue of whether a manufacturer is liable for a design defect if it follows the specifications of a customer in manufacturing a finished product, but, based on general products liability principles, the court concluded that Minnesota would follow the general rule that a manufacturer is not liable for defects in the finished product if they used reasonable care in designing the component to specifications.

**Strict Liability and Negligence Theories.** However, it is not clear how strict liability differs from negligence theory. The court in *Bilotta* indicates that “[t]he distinction between strict liability and negligence in design-defect and failure-to-warn cases is that in strict liability, knowledge of the condition of the product and the risks involved in that condition will be imputed to the manufacturer, whereas in negligence these elements must be proven.” 346 N.W.2d at 622. Professor Wade, who initially suggested the imputed knowledge standard, has now repudiated that standard because of the confusion created by use of the standard. *See Wade, On the Effect in Product Liability of Knowledge Unavailable Prior to Marketing*, 58 N.Y.U.L.Rev. 734, 735 (1983).

**Imputed Knowledge.** The imputed knowledge standard will be of little or no use in cases where a conscious design defect is involved. A conscious decision whether to incorporate a safety device, for example, will tend to establish that the product manufacturer knew of the condition of the product and the risks involved in the use of the product. In a case where the design defect was the result of an error, or where the decision was not made with clear knowledge of its ramifications, it may be appropriate to add to the jury instruction language incorporating the imputed knowledge concept. The following addition to the jury instruction would incorporate that concept:

### **Imputed Knowledge**

You must assume that the manufacturer knew about the condition of the product and the risks involved in the product’s condition.

Use this to decide whether the manufacturer used reasonable care in the design of the product.

If the imputed knowledge language is applied literally in either design defect or failure to warn cases, then the manufacturer’s conduct in either design defect or failure to warn cases would be judged according to knowledge of product dangers that the manufacturer did not



discover and could not have discovered. However, the Committee is of the opinion that the supreme court did not intend to impute to a product manufacturer knowledge of a danger that was not and could not have been discovered at the time the product was manufactured. To avoid applying the imputed knowledge language in such cases, the suggested instruction incorporating the imputed knowledge language should be utilized only where there is evidence that the manufacturer either knew or should have known of the dangers created by the product in question.

**Feasible Alternative Designs.** Although a more general weighing and balancing of the risk created by and utility of the product may be considered, it may be that the critical issue in the case will be the feasibility of a product design. In design defect cases, an issue that commonly arises is whether the plaintiff is required to prove the existence of a feasible alternative design in order to establish the existence of a design defect in the defendant's product. The Restatement (Third) of Torts requires a showing that a product is defective in design "when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design." Restatement (Third) of Torts § 2(b) (1998). The comments point out that "a design is defective if the product could have been made safer by the adoption of a reasonable alternative design. If such a design could have been practically adopted, the plaintiff establishes defect under Subsection (b)." Restatement (Third) of Torts § 2(b) cmt. d.

In *Kallio*, the court also considered whether the plaintiff's prima facie case in a design defect case included proof of a feasible alternative design. The trial court instructed the jury that, in addition to the factors to be considered in CIVJIG 75.20, it could also consider additional factors, including "state of the art" and the "practices of the automotive industry" at the time the pickup truck in question was sold. 407 N.W.2d at 96. The defendant requested a jury instruction telling the jury that the plaintiff had the burden of proving the existence of a safer, feasible alternative design as an element of his case. The supreme court disagreed:

Although normally evidence of a safer alternative design will be presented initially by the plaintiff, it is not necessarily required in all cases. Such evidence is relevant to, and certainly may be an important factor in, the determination of whether the product was unreasonably defective. However, existence of a safer, practical alternative design is not an element of an alleged defective product design prima facie case.

Defendant's requested Instruction No. 11 is overly broad, not only because, in essence, it tends to elevate proof of the existence of a feasible alternative safer design from a factor properly for jury consideration to an element of the plaintiff's claim, but also because it tended to overemphasize that factor.

407 N.W.2d at 96–97.

In *Omnetics, Inc. v. Radiant Technology Corp.*, 440 N.W.2d 177 (Minn. Ct. App. 1989), the court of appeals followed *Kallio* in rejecting the defendant's argument that the jury should be instructed on the feasibility issue according to former Civil JIG 117, Authorities (1986) (now CIVJIG 75.20). The court read *Kallio* as indicating "general disapproval of giving supplementary jury instructions when the primary instruction correctly states the law and counsel have full opportunity in their closing arguments to address what they feel are the important factors of the law." 440 N.W.2d at 181.

However, the court in *Kallio* noted that, as a practical matter, proof of a feasible alternative may be critical in determining whether a design is defective. 407 N.W.2d at 96, n.6. In *Krein v. Raudabough*, 406 N.W.2d 315, 318–19 (Minn. Ct. App. 1987), the court of appeals noted *Kallio* in finding that the plaintiff's evidence of a dangerous design defect in an armored truck was insufficient due to the lack of proof of a feasible alternative design.

**Feasible Alternative Design—Jury Instruction.** If a jury is instructed on the feasible alternative design requirement, the following jury instruction is recommended:

**Decide if the alternative design was feasible**

In deciding if the suggested alternative design was feasible at the time the product was manufactured, consider these factors:

1. *Technologically feasible.* Was the suggested alternative design technologically feasible? The alternative design was "technologically feasible" if, given the state of technology at the time the product was manufactured, the alternative design was technologically available.

2. *Safety.* Would the suggested alternative design have been safe? In other words, would the suggested alternative design have provided:

a. Overall safety as good as or better than the actual design that (the manufacturer) used, and

b. Better protection against the particular hazard or risk of injury created by the product?

3. *Cost.* Would the suggested alternative design have significantly increased the cost of the product?

4. *Performance.* Would the suggested alternative design have affected the performance of the product?



For the suggested alternative design to have been feasible at the time the product was manufactured, you must find that: (1) the suggested alternative design was technologically feasible, and (2) any increases in the cost or changes in the performance of the product would have been outweighed by the added safety of the suggested alternative design.

The instruction is based upon *Wilson v. Piper Aircraft Corp.*, 282 Or. 61, 577 P.2d 1322, 1326 (1978), rehearing denied, 282 Or. 411, 579 P.2d 1287 (1978), a case involving an airplane crash in which the plaintiff attempted to prove that the airplane was defective in several respects, including the use of a carbureted rather than fuel injected engine. While the court in *Wilson* stated that the design factors were not for jury consideration, 577 P.2d at 1326, n.3, it provided detailed guidance for judges making the determination of whether there is sufficient evidence of a feasible alternative to justify submitting a design case to a jury. The court noted that evidence of a practicable alternative design would require proof that the alternative was not only "technically feasible but also practicable in terms of cost and the over-all design and operation of the product." 577 P.2d at 1326, n.3. The court noted that the evidence did not show what "effect the substitution of a fuel injected engine in this airplane design would have had upon the airplane's cost, economy of operation, maintenance requirements, over-all performance, or safety in respects other than susceptibility to icing." 577 P.2d at 1326, n.3. A jury would consider the same evidence in determining whether the product is defective, even if it was not specifically instructed on the elements of a feasible alternative.

**Obvious Dangers.** The supreme court has either removed or refused to apply certain principles that would limit the scope of a manufacturer's responsibility in products liability cases. In *Halvorson v. American Hoist & Derrick Co.*, 307 Minn. 48, 57, 240 N.W.2d 303, 308 (1976), the court appeared to establish a distinction between obvious and nonobvious product defects, finding that there is no duty to install additional safety devices on a product where the risk of injury is obvious, known by the user, and specifically warned against.

In subsequent cases, the court appeared to move away from a rigid application of that distinction. See, e.g., *Parks v. Allis-Chalmers Corp.*, 289 N.W.2d 456 (Minn. 1979). In *Holm v. Sponco Mfg., Inc.*, 324 N.W.2d 207 (Minn. 1982), the court specifically rejected the latent-patent danger rule adopted in *Halvorson*, substituting instead a reasonable care balancing approach. 346 N.W.2d at 213. Although obviousness of a danger created by a product may be considered in determining if a product is defective, it will not be a complete bar to recovery. See 324 N.W.2d at 212-213. Obviousness of a danger may also be relevant to the issue of whether a plaintiff exercised reasonable care in using the product. See 324 N.W.2d at 212.

**Nondelegation of the Manufacturer's Duty.** In *Bilotta v. Kelley Co., Inc.*, 346 N.W.2d 616 (Minn. 1984), appeal after remand, 358

N.W.2d 679 (Minn. Ct. App. 1984), the court held that a manufacturer's obligation to design a safe product cannot be delegated to others under the assumption that they will install necessary safety devices on the product. See 346 N.W.2d at 624. However, this would not prevent the assessment of liability against another who should have installed the safety device. That party could be held liable, along with the product manufacturer. See, e.g., *Lambertson v. Cincinnati Corp.*, 312 Minn. 114, 257 N.W.2d 679 (1977).

**Breach of Warranty.** In *Bilotta*, the supreme court did not indicate how claims for breach of warranty should be managed if asserted along with strict liability claims. If strict liability and negligence are merged into a single theory of recovery in a design defect case, an issue remains as to whether it is permissible or appropriate to submit to the jury claims based upon breach of express warranty, implied warranty of merchantability, or implied warranty of fitness for a particular purpose. See M.S.A. §§ 336.2-313, 336.2-314, 336.2-315 (1996).

It seems clear from the discussion in *Bilotta* that submission of a claim for express warranty, along with the design defect claim, would be appropriate where it is justified by the evidence. See *Bilotta v. Kelley Co., Inc.*, 346 N.W.2d 616, 625 (Minn. 1984), appeal after remand, 358 N.W.2d 679 (Minn. Ct. App. 1984). The same result should be achieved with implied warranty of fitness for a particular purpose. In both situations, statements or representations may provide the basis for liability even if, absent the representations or statements, the product would not be defective under the reasonable care balancing approach adopted in *Holm v. Sponco Mfg., Inc.* and *Bilotta v. Kelley Co.* See *Piotrowski v. Southworth Products Corp.*, 15 F.3d 748, 752 (8th Cir. 1994).

The result is less clear where the plaintiff's theory of recovery is implied warranty of merchantability. *Goblirsch v. Western Land Roller Co.*, 310 Minn. 471, 476, 246 N.W.2d 687, 690 (1976) established that it is not error to refuse to give an implied warranty of merchantability instruction if the jury instruction on strict liability is based on the standard drawn from *Farr v. Armstrong Rubber Co.*, 288 Minn. 83, 179 N.W.2d 64 (1970). The jury instruction given in *Farr* defined the term "defective" to mean that "a product is defective if it fails to perform reasonably, adequately, and safely the normal, anticipated or specified use to which the manufacturer intends that it be put." 288 Minn. at 89, 179 N.W.2d at 68. The Minnesota Court of Appeals has indicated that strict liability preempts implied warranty. See *In re Shigellosis Litigation*, 647 N.W.2d 1, 11-12 (Minn. Ct. App. 2002); *Continental Ins. Co. v. Loctite Corp.*, 352 N.W.2d 460, 463 (Minn. Ct. App. 1984).

Addition of implied warranty of merchantability instructions in design defect cases would only serve to add another overlapping theory of recovery that can only lead to confusion and inconsistent jury verdicts, problems the court in *Bilotta* hoped to avoid by submission of a case under a single theory of recovery. Therefore, the Committee is of the



opinion that in design defect cases to which strict liability applies, it is inappropriate to submit jury instructions based on implied warranty of merchantability, although it may be justifiable, in an appropriate case, to submit instructions based upon express warranty or implied warranty of fitness for a particular purpose.

**Crashworthiness.** There is only one Minnesota case, an unpublished court of appeals decision, *Rebehn v. General Motors Corp.*, 1995 WL 146662 (Minn. Ct. App. 1995), rev. denied (Minn. May 31, 1995), that deals with the crashworthiness issue. The trial court instructed the jury pursuant to former Civil JIG 117 (now CIVJIG 75.20), the general design defect instruction. The court noted that:

Crashworthiness cases concern those alleged design defects which cause or fail to prevent injuries resulting from accidents, not the defects which cause the accidents themselves. We conclude, therefore, that crashworthiness cases are actually a subset of design defect cases, and our question becomes whether it is error not to instruct on crashworthiness specifically as opposed to design defects generally.

1995 WL 146662 at \*4. The plaintiff requested a fairly detailed instruction on crashworthiness, which is reproduced in the opinion. The instruction governed the manufacturer's obligation in crashworthiness cases and the plaintiff's burden of proof with respect to damages:

You are instructed that the plaintiff has the burden of proving that the alleged defect was a substantial factor in producing damages over and above those which were probably caused as the result of the original impact or collision. The plaintiff does not have the burden of proving what injuries plaintiff John Rebehn would have incurred in the absence of the alleged defect(s) in the motor vehicle in issue. Thus, in this case, plaintiff must present sufficient evidence for the trier of fact to reasonably find that the vehicle contained one or more defects and that the defects were substantial factors in producing the injuries which ultimately resulted in damage to the spinal cord that caused Mr. Rebehn's paralysis and/or paraplegic condition. If the plaintiff fails to show that the defects were a substantial factor, there can be no recovery against defendant General Motors Corporation relative to plaintiff's claim that the motor vehicle in issue was not "crashworthy" or that the vehicle did not provide reasonable occupant protection. However, if the defects are shown to be a substantial factor, then and in that event, defendant General Motors Corporation is considered to be a joint tortfeasor and you should not attempt to apportion the plaintiff's total damages between defendant General Motors Corporation, plaintiff John Rebehn, and other entities who may be found to be at fault who are not parties to this litigation.

1995 WL 146662 at \*1. The court of appeals held that it was not error

for the trial court to refuse the more specific instruction requested by the plaintiff in favor of the more general design defect instruction in former Civil JIG 117. 1995 WL 146662 at \*4.

The Restatement (Third) of Torts § 16 (1998) takes the following position on the crashworthiness issue:

(a) When a product is defective at the time of sale and the defect is a substantial factor in increasing the plaintiff's harm beyond that which would have resulted from other causes, the product seller is subject to liability for the increased harm.

(b) If proof supports a determination of the harm that would have resulted from other causes in the absence of the product defect, the product seller's liability is limited to the increased harm attributable solely to the product defect.

(c) If proof does not support a determination under Subsection (b) of the harm that would have resulted in the absence of the product defect, the product seller is liable for all of the plaintiff's harm attributable to the defect and other causes.

(d) A seller of a defective product who is held liable for part of the harm suffered by the plaintiff under Subsection (b), or all of the harm suffered by the plaintiff under Subsection (c), is jointly and severally liable with other parties who bear legal responsibility for causing the harm, determined by applicable rules of joint and several liability.

For instructions on apportionment, see CIVJIG 15.20.

**Seat Belt Evidence.** In *Olson v. Ford Motor Co.*, 558 N.W.2d 491 (Minn. 1997), the Minnesota Supreme Court, in answer to a certified question from the United States District Court for the District of Minnesota, held that M.S.A. § 169.685, subd. 4, which prohibits the introduction of evidence of "the use or failure to use seat belts" in "any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle," "bars the introduction of evidence of a plaintiff's personal seat belt use in a crashworthiness action alleging the seat belt itself was negligently designed or manufactured." 558 N.W.2d at 496.

In 1999, the legislature amended M.S.A. § 169.685, subd. 4, to make it clear through the addition of a new paragraph (b) that seat belt evidence is admissible in a suit involving the issue of whether the seat belt or child passenger restraint system is defectively designed, manufactured, or installed. As amended, the statute reads as follows:

(a) Except as provided in paragraph (b), proof of the use or failure to use seat belts or a child passenger restraint system as

described in subdivision 5, or proof of the installation or failure of installation of seat belts or a child passenger restraint system as described in subdivision 5 shall not be admissible in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.

(b) Paragraph (a) does not affect the right of a person to bring an action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint system. Paragraph (a) does not prohibit the introduction of evidence pertaining to the use of a seat belt or child passenger restraint system in an action described in this paragraph.

In *Burck v. Pederson*, 704 N.W.2d 532 (Minn. Ct. App. 2005), rev. denied (Minn. Dec. 13, 2005), the court of appeals held that the statute barred the introduction of evidence that a seat belt was responsible for abdominal injuries sustained by the plaintiff in an automobile accident, even though the plaintiff brought suit against the defendant who allegedly caused the accident.

In *Harrison ex rel. Harrison v. Harrison*, 733 N.W.2d 451, 455 (Minn. 2007), the supreme court held that the plain language of the statute permitted a child's suit against his parents for the negligent installation and maintenance of a restraint system in their car.

#### Research References

*West's Key Number Digest*  
Products Liability ¶11, 36, 96

*Legal Encyclopedias*  
C.J.S., Motor Vehicles §§ 409 to 418, 429 to 430; Products Liability §§ 19 to 22, 206 to 217



**CIVJIG 75.25****THE DUTY TO WARN (STRICT LIABILITY AND NEGLIGENCE)****PART A****A manufacturer's duty to provide adequate warnings and instructions**

A manufacturer has a duty to provide reasonably adequate (warnings) (instructions) for its products to those who use the product when the product:

1. Is used as intended, or
2. Is used in a way that the manufacturer could reasonably have anticipated.

**Adequate warning**

A manufacturer must keep up with knowledge and technology in the field.

A manufacturer's duty to provide reasonably adequate (warnings) (instructions) must be judged according to the knowledge and technology that existed at the time the product was sold.

In deciding whether the manufacturer's (warnings) (instructions) were reasonably adequate, consider all the facts and circumstances, including, among others:

1. The likelihood that harm would result from use of the product
2. The seriousness of the harm that would result
3. The cost and ease of providing (warnings) (instructions) to avoid the harm



4. Whether the (warnings) (instructions) are in a form the ordinary user could reasonably be expected to notice and understand
5. Whether the manufacturer considered the knowledge and technology in the field
6. [Other factors].

A product that is not accompanied by reasonably adequate (warnings) (instructions) is in a defective condition unreasonably dangerous to whoever uses or is affected by the product.

The product must be reasonably safe for use if the (warnings) (instructions) are followed.

## PART B

### **Decide if warnings and instructions had to be provided**

A manufacturer has a duty to use reasonable care in deciding whether (to warn of dangers involved in using its product) (to provide instructions for safe use of the product).

#### **Reasonable care**

"Reasonable care" is the standard of care you would expect a reasonable person to follow in the same or similar circumstances.

You must decide if a manufacturer using reasonable care would have provided (warnings) (instructions) for the safe use of the product.

A manufacturer has a duty to keep up with knowledge and technology in the field. This duty to provide reasonable (warnings) (instructions) must be judged according to the knowledge and advances that existed at the time the product was manufactured.

In deciding whether the manufacturer should have provided

(warnings) (instructions), consider all the facts and circumstances, including, among others:

1. The likelihood that harm would result from use of the product
2. The seriousness of the harm that would result
3. The cost and ease of providing (warnings) (instructions) that would avoid the harm
4. Whether the manufacturer considered the knowledge and technology in the field.
5. [Other factors].

A product that is not accompanied by reasonably adequate (warnings) (instructions) is unreasonably dangerous to (whoever uses or is affected) (property placed at risk) by the product.

---

#### **USE NOTE**

There are two jury instructions on failure to warn. They have been separated so that the trier of fact will find it easier to focus on the critical question in each situation. Part A assumes that there are warnings or instructions, and the adequacy is in issue. Part B assumes that there is no warning, and the issue is whether any warning should have been given.

#### **PART A**

This instruction should be given in cases where the jury is required to determine whether the warnings or instructions that accompanied the product made the product reasonably safe for use.

#### **PART B**

This instruction is intended for use in cases where the manufacturer has not provided warnings for the use of the product, and the issue is whether warnings should in fact have been given.

#### **AUTHORITIES**

The Minnesota Supreme Court has stated that the duty to warn

consists of the duty to give adequate instructions for safe use and the obligation to warn of dangers inherent in improper use of the product. See *Frey v. Montgomery Ward & Co.*, 258 N.W.2d 782, 787 (Minn. 1977).

### **Strict Liability and Negligence in Failure to Warn Cases.**

Whether there are differences between strict liability and negligence has not been conclusively resolved in failure to warn cases. The supreme court indicated in *Bigham v. J.C. Penney Co.*, 268 N.W.2d 892, 897 (Minn. 1978) that Minnesota law does not sharply distinguish between negligence and strict liability in failure to warn cases. That lack of distinction was noted again in *Hauenstein v. The Loctite Corp.*, 347 N.W.2d 272 (Minn. 1984). The court noted in that case that several jurisdictions have recognized the standard for the duty to warn in strict liability is based upon negligence concepts. 347 N.W.2d at 274. The court also noted the suggestion in the dissenting opinion in *Holm v. Sponco Mfg., Inc.*, 324 N.W.2d 207, 215 (Minn. 1982) that, "[a]s a practical matter, where the strict liability claim is based on \* \* \* failure to warn \* \* \* there is essentially no difference between strict liability and negligence."

In *Hauenstein* the plaintiff's sole theory of the case was that there were inadequate warnings on the product in question. The case was submitted to the jury on negligence and strict liability theories. The jury determined that the product was not defective, but that the defendant was negligent. To avoid the problem of the inconsistent verdict in failure to warn cases, the court held that where a plaintiff seeks damages for both negligence and strict liability in failure to warn cases, the plaintiff may plead and prove both theories, but by the time the parties rest, the plaintiff must elect either negligence or strict liability for submission of the case to the jury. See 347 N.W.2d at 275.

The court, however, did not indicate how the strict liability instruction should be framed. The failure to warn instructions take the position that the similarity between strict liability and negligence theories in a failure to warn case are sufficiently similar to justify submission to the jury of a single instruction covering failure to warn, irrespective of whether the theory is strict liability or negligence.

A major conceptual difference between strict liability and negligence in failure to warn cases is whether a manufacturer or seller can be held liable for failure to warn of product dangers that could not in the exercise of reasonable care have been discovered. The supreme court indicated in *Bilotta v. Kelley Co., Inc.*, 346 N.W.2d 616, 622 (Minn. 1984), appeal after remand, 358 N.W.2d 679 (Minn. Ct. App. 1984), that in failure to warn and design defect cases, the distinction between strict liability and negligence is that knowledge of the condition of the product and the risks involved in that condition will be imputed to the manufacturer in strict liability, whereas these elements must be proved in negligence. The imputed knowledge standard has been adopted in



other jurisdictions, e.g., *Beshada v. Johns-Manville Prods. Corp.*, 90 N.J. 191, 447 A.2d 539 (1982). However, the general application of the standard to failure to warn cases has been questioned by the New Jersey Supreme Court in *Feldman v. Lederle Laboratories*, 97 N.J. 429, 479 A.2d 374 (1984), as well as by other courts, see, e.g., *Carlin v. Superior Court*, 13 Cal.4th 1104, 1112–1113, 56 Cal.Rptr.2d 162, 166, 920 P.2d 1347, 1351 (Cal. 1996) (noting its prior cases holding that a manufacturer may not be held liable for failure to warn of scientifically unknowable dangers).

The Committee is of the opinion that the supreme court in *Bilotta* and *Hauenstein* did not intend to impute knowledge of the danger to the product manufacturer or seller in determining whether adequate warnings were given. The jury instructions, therefore, contain limiting language that would require proof that a manufacturer or seller knew or reasonably could have discovered the product danger before liability can be imposed for inadequate warnings or instructions.

A second issue concerns the standard to be used to determine whether warnings are adequate. The adequacy of warnings could be measured from the perspective of a reasonable product manufacturer, or they could be measured by an adequacy standard that would require warnings of dangers that were scientifically knowable, without reference to any standard of reasonableness.

The instructions in CIVJIG 75.25 break the warning issue into two parts. The first focuses on the issue of whether the manufacturer's warnings were adequate, measured by the same risk-utility approach utilized in deciding design defect cases. The second part focuses on the issue of whether the manufacturer should have warned at all. It frames the issue in terms of whether a reasonable manufacturer would have warned of scientifically knowable dangers. Cf. *Carlin v. Superior Court*, 13 Cal.4th 1104, 1112–1113, 56 Cal.Rptr.2d 162, 166, 920 P.2d 1347, 1351 (Cal. 1996).

The Committee's interpretation of Minnesota's appellate cases is that the duty to warn is based primarily on negligence principles. See *Forster v. R.J. Reynolds Tobacco Co.*, 437 N.W.2d 655, 661 (Minn. 1989); *Germann v. F.L. Smithe Mach. Co.*, 395 N.W.2d 922, 926, n. 4 (Minn. 1986); *Willmar Poultry Co. v. Carus Chem. Co.*, 378 N.W.2d 830 (Minn. Ct. App. 1985), rev. denied (Minn. Feb. 14, 1986), rev. denied (Minn. Feb. 19, 1986). CIVJIG 75.25 provides for a single jury instruction in failure to warn cases, irrespective of whether the plaintiff elects strict liability or negligence.

**Manufacturer Held to Standard of an Expert.** The requirement that a manufacturer keep informed of scientific knowledge and discoveries in its field is consistent with *Karjala v. Johns-Manville Prods. Corp.*, 523 F.2d 155 (8th Cir. 1975) (applying Minnesota law). However, the knowledge should be judged at the time the product in question is manufactured.



**Functions of Judge and Jury.** In *Germann*, the court held that “[t]he question of whether a legal duty to warn exists is a question of law for the court—not one for jury resolution.” 395 N.W.2d at 924. The standards for making the duty determination are as follows:

[T]he court goes to the event causing the damage and looks back to the alleged negligent act. If the connection is too remote to impose liability as a matter of public policy, the courts then hold there is no duty, and consequently no liability. On the other hand, if the consequence is direct and is the type of occurrence that was or should have been reasonably foreseeable, the courts then hold as a matter of law a duty exists.

395 N.W.2d at 924; see *Anderson v. Shaughnessy*, 519 N.W.2d 229, 233 (Minn. Ct. App. 1994), rev’d on other grounds, 526 N.W.2d 625 (Minn. 1995). The remaining issues, such as the adequacy of the warning, breach of duty, and causation, will be resolved by the jury. See also *Balder v. Haley*, 399 N.W.2d 77, 81 (Minn. 1987); *Krutsch v. Walter H. Collin GmbH Verfahrenstechnik Und Maschinenfabric*, 495 N.W.2d 208, 212 (Minn. Ct. App. 1993); *Wilson v. Harris Corp.*, 1993 WL 724813 at 4 (D.Minn. 1993).

In effect, the judge decides “whether there is a question of fact for the jury. In submitting a failure to warn claim to the jury, the trial court ordinarily is instructing the jury to determine from all the evidence if, in fact, the risk to be warned against was reasonably foreseeable, so that a duty to warn was necessary; and if so, whether any warnings were adequate or could have been effective (which relates to the scope of the duty); and, finally, whether the duty was breached and causation was present.” John E. Simonett, *Dispelling the Products Liability Syndrome: Tentative Draft No. 2 of the Restatement (Third)*, 21 Wm. Mitchell L. Rev. 361, 365 (1995).

In *Germann*, the court also considered the manufacturer’s obligation to warn against misuses of its products. In its analysis, the court considered the effect of an earlier negligence decision, *Westerberg v. School Dist. No. 792, Todd County*, 276 Minn. 1, 148 N.W.2d 312 (1967). In *Westerberg*, the court noted that the duty to warn rests upon foreseeability of the injury. The court held in that case that actions such as improper maintenance do not have to be anticipated by the manufacturer. The defendant in *Germann* argued that *Westerberg* meant that a manufacturer has no duty to warn of dangers involved in the misuse of a product, but the court said that such a reading would extend *Westerberg* beyond its original holding. In *Westerberg*, the court stated that the “[m]anufacturer of a chattel can hardly be expected to warn of every conceivable danger that might arise from misuse of the chattel or failure to maintain it after it breaks down.” 276 Minn. at 6, 148 N.W.2d at 315. The court in *Germann* distinguished *Westerberg*, stating that:

Our later cases \* \* \* demonstrate that if a manufacturer-seller

should anticipate that an unwarned operator might use the machine in a particular manner so as to increase the risk of injury and the manufacturer has no reason to believe that users will comprehend that risk, a duty to warn may exist.

395 N.W.2d at 925. *See also* *Wilson v. Harris Corp.*, 1993 WL 724813, \*3 (D.Minn. 1993) (the manufacturer has no duty to warn if the user is aware of the risk). *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 99 (Minn. 1987); *Drager v. Aluminum Industries*, 495 N.W.2d 879, 884 (Minn. Ct. App. 1993), rev. denied (Minn. April 20, 1993).

In *Willmar Poultry Co. v. Carus Chem. Co.*, 378 N.W.2d 830 (Minn. Ct. App. 1985), rev. denied (Minn. Feb. 14, Feb. 19, 1986), the court of appeals stated that:

Both a manufacturer's duty to be informed of current scientific knowledge and a manufacturer's duty to exercise reasonable care and foresight to discover a danger in his product is relevant to whether a manufacturer knew or should have known of the risks in its product.

378 N.W.2d at 837.

**Duty of Component Parts Manufacturer.** The duty of a manufacturer of component parts to warn depends on whether the standards in *Germann* are met. Where the component parts manufacturer sold the product in a nondefective state and could not have foreseen any dangers associated with the modification and misuse of the product, there is no duty to warn. *See Huber v. Niagara Mach. and Tool Works*, 430 N.W.2d 465, 468 (Minn. 1988).

**Duty of Successor Corporation.** In *J & W Enterprises, Inc. v. Economy Sales, Inc.*, 486 N.W.2d 179, 181 (Minn. Ct. App. 1992), the court of appeals affirmed the trial court's grant of summary judgment in a case involving a failure to warn claim based on allegedly improper warnings on a fire extinguisher, because the plaintiff could not establish reliance on the warning.

In certain situations, a successor corporation may have a duty to warn:

Relevant considerations include whether the successor took over its predecessor's service contracts, contracted to perform or actually performed service of the product, or knew of product defects and of the location or owner of the product.

*Anderson v. Shaughnessy*, 519 N.W.2d 229, 233 (Minn. Ct. App. 1994), reversed on other grounds, 526 N.W.2d 625 (Minn. 1995), *citing Niccum v. Hydra Tool Corp.*, 438 N.W.2d 96, 100 (Minn. 1989). In *Niccum*, the supreme court refused to extend the post-sale duty to warn in *Hodder* to a successor corporation. The court noted that the duty to warn

imposed in that case specifically involved a subsidiary corporation, and that the post-sale duty to warn was specifically limited to the *Hodder* facts. 438 N.W.2d at 99.

**Duty to Provide Training.** In *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572 (Minn. 2012), the supreme court held that an aircraft manufacturer/seller's duty to warn the purchaser of one of its airplanes did not include a duty to provide training and that the manufacturer/seller did not assume a duty to provide the flight lesson in question outside of its contract with the purchaser.

#### Research References

*West's Key Number Digest*  
Products Liability ¶14, 96

*Legal Encyclopedias*  
C.J.S., Motor Vehicles §§ 429 to 430; Products Liability §§ 26 to 32, 206 to 217



## CIVJIG 75.26

## SOPHISTICATED INTERMEDIARIES

[No recommended committee instruction]

---

**USE NOTE**

In *Gray v. Badger Mining Corp.*, 676 N.W.2d 268 (Minn. 2004), the Minnesota Supreme Court noted several defenses that could “obviate or discharge the duty of a supplier to warn.” The court acknowledged that the defenses overlap, although each has slightly different features. The court then listed the following defenses: “(1) learned intermediary; (2) sophisticated user; (3) sophisticated intermediary; (4) bulk supplier; and (5) raw material/component part supplier defenses.”

Because of the complexity of the issues and the lack of a fully developed factual record in the case, the Committee takes no position on the form that any jury instructions should take on any of these proposed defenses.

**AUTHORITIES**

In *Gray v. Badger Mining Corp.*, 676 N.W.2d 268 (Minn. 2004), the issue concerned the obligation of a raw materials supplier to warn of the hazards relating to the use of silica in foundry processes. The plaintiff, a foundry worker, sued several suppliers of silica, alleging that his repeated exposure to silica dust caused his silicosis of the lungs. He sued on negligence and strict liability theories, as well as breach of warranties of merchantability and fitness for intended purpose. The plaintiff settled with all defendants except Badger Mining prior to trial. Badger Mining moved for summary judgment on the grounds that the plaintiff’s employer, Smith Foundry, was a sophisticated purchaser and that Badger Mining therefore did not have a duty to warn the plaintiff of the hazards of using silica in the foundry process. The district court denied the motion and the court of appeals reversed, holding that the sophisticated purchaser defense applied. *Gray v. Badger Mining Corp.*, 664 N.W.2d 881, 887 (Minn. Ct. App. 2003). Badger Mining also argued that it did not have a duty to warn because of the “raw material/component part supplier” defense. The court of appeals did not reach that issue. The supreme court granted review on the duty to warn issue and on Badger Mining’s petition for cross-review of the raw material/component part supplier defense. The supreme court held that the district court did not err in denying the motion for summary judgment because genuine issues of material fact “with respect to the sophistication of Gray and Smith Foundry and the adequacy of the warnings and instructions given by Badger Mining to Smith Foundry” prevented it from deciding either that Badger Mining owed no duty to warn or that the warning it provided to Smith Foundry was discharged. 676 N.W.2d at 271, 281–82.



The supreme court began its analysis with a summary of the principles governing warning obligations in Minnesota. The court noted that a supplier "has a duty to warn end users of a dangerous product if it is reasonably foreseeable that an injury could occur in its use." 676 N.W.2d at 274. The obligation to warn also includes the duty to provide "adequate instructions for the safe use of the product." 676 N.W.2d at 274. The court noted that it has also said that a seller or manufacturer has a duty to give warnings if it has actual or constructive knowledge of dangers presented by the product. *Frey v. Montgomery Ward & Co.*, 258 N.W.2d 782, 787 (Minn. 1977), citing *Hill v. Wilmington Chem. Corp.*, 279 Minn. 336, 156 N.W.2d 898 (1968).

The court said that a legally adequate warning should:

- (1) attract the attention of those that the product could harm; (2) explain the mechanism and mode of injury; and (3) provide instructions on ways to safely use the product to avoid injury.

676 N.W.2d at 274.

The court noted that it has endorsed the broad statement of principles in the Restatement (Second) of Torts § 388 (1965), concerning suppliers of goods. Section 388 reads as follows:

One who supplies directly or through a third person a chattel for another to use, is subject to liability to those whom the supplier should expect to use the chattel with the consent of the other or to be in the vicinity of its probable use, for bodily harm caused by the use of the chattel in the manner for which and by a person for whose use it is supplied, if the supplier

- (a) knows, or from facts known to him should realize, that the chattel is or is likely to be dangerous for the use for which it is supplied;

- (b) and has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition; and

- (c) fails to exercise reasonable care to inform them of its dangerous condition or of the facts, which make it likely to be so.

After establishing the basic standards for warnings, the court, drawing from cases in other jurisdictions and learned treatises, noted that there are several defenses that could "obviate or discharge the duty of a supplier to warn." The court acknowledged that the defenses overlap, although each of the defenses has slightly different features. The court then listed the following defenses:

- (1) learned intermediary; (2) sophisticated user; (3) sophisticated

intermediary; (4) bulk supplier; and (5) raw material/component part supplier defenses.

676 N.W.2d at 275. The court noted that the first four defenses are drawn from Restatement (Second) of Torts § 388, and that the raw material/component supplier defense is drawn from the Restatement (Third) of Torts: Products Liability § 5 (1998).

### 1. Learned Intermediary

The supreme court recognized the learned intermediary defense in *Mulder v. Parke Davis & Co.*, 288 Minn. 332, 335–36, 181 N.W.2d 882, 885 (1970). In *Mulder*, a wrongful death case arising out of the prescription of chloromycetin by the plaintiff's decedent's physician, two of the issues were whether the drug company was negligent in failing to warn of the drug's dangerous propensities and whether the physician was negligent in prescribing the drug. The drug company provided warnings in the stuffers accompanying the drug and in the Physicians' Desk Reference, although the plaintiff alleged that the warnings did not come to the attention of the prescribing physician. The physician testified that he was aware of the risks involved in prescribing chloromycetin. Based upon that evidence, the trial court directed a verdict for Parke Davis. The supreme court affirmed, holding that the manufacturer is not liable "if the doctor was fully aware of the facts which were the subject of the warning." 288 Minn. at 335, 181 N.W.2d at 885. The court in *Mulder* also said that the failure of the physician "to follow an unchallenged method of use prescribed by the manufacturer constitutes a break in causation which exonerates the manufacturer from any liability." 288 Minn. at 336, 181 N.W.2d at 885, citing *Magee v. Wyeth Laboratories, Inc.*, 214 Cal.App.2d 340, 29 Cal.Rptr. 322, 328 (1963).

The court in *Gray* noted that the learned intermediary defense has been limited primarily to pharmaceutical products, but also that it was applied in a different professional context in *Minneapolis Soc'y of Fine Arts v. Parker-Klein*, 354 N.W.2d 816, 821–22 (Minn. 1984), overruled on other grounds, *Hapka v. Paquin Farms*, 458 N.W.2d 683, 687 (Minn. 1990) (manufacturer of bricks did not have a duty to instruct on the proper precautions for brick installation because the architects should have known of the necessary precautions).

The court in *Gray* declined to reach the issue of whether the learned intermediary defense would apply in the instant case, however, because the court of appeals did not decide the case on that basis and Badger Mining did not argue that the defense should apply.

### 2. Sophisticated User

The court in *Gray* noted that the sophisticated user defense insulates a supplier from an obligation to warn the ultimate user if the supplier has reason to know that the user will realize the dangerous

condition of the product. The court noted the formulation of the doctrine in *Hall v. Ashland Oil*, 625 F.Supp. 1515, 1520 (D.Conn.1986):

[O]ne with a duty to warn is not liable for failing to warn a party of facts that the party already knew. The theory of this exception is that a failure to warn a party of a danger of which it was independently aware cannot be the proximate cause of injury resulting from that danger, since presumably the party would not have acted differently even if warned.

The supreme court noted that it has not considered the sophisticated user defense by name, but that it recognized the fundamental principles of the defense in *Hill v. Wilmington Chem. Corp.*, 279 Minn. 336, 340–44, 156 N.W.2d 898, 902–04 (1968). As characterized by the court in *Gray*:

In *Hill*, we held that a supplier of dangerous chemicals had no duty to warn of the dangerous propensities of the chemical where those dangers were already known to the purchaser . . . . Because the evidence was conclusive that the purchaser knew of the dangers, we held that the chemical supplier had no duty to warn . . . .

676 N.W.2d at 277, citing *Hill*, 279 Minn. at 340–44, 156 N.W.2d at 902–04. The court in *Hill* also said that “Under these circumstances, we think the trial court was correct in holding that any negligence of [the supplier] did not proximately cause the loss sustained by [the purchaser].” 279 Minn. at 344, 156 N.W.2d at 904, as cited in *Gray*, 676 N.W.2d at 277.

The court in *Gray* said that it was unnecessary to determine the exact application or scope of the sophisticated user defense:

[T]here is evidence that Gray’s knowledge was inferior to that of Badger Mining. There is no evidence that Gray was familiar with industry or government publications on the dangers of silicosis. His general knowledge of the risk was little more than the intuitive sense of danger from experiencing dust in the foundry environment. More specifically, there is no evidence that he knew that disposable respirators were ineffective in preventing silicosis in a foundry environment. Because there is evidence that Badger Mining had greater general knowledge of the dangers of the use of silica in the foundry process and had specific knowledge of the ineffectiveness of disposable respirators, it cannot be said as a matter of law that Gray’s knowledge was sufficient to relieve Badger Mining of its duty to warn. At a minimum, there are genuine issues of material fact that preclude summary judgment on the question of whether Gray was a sophisticated user.

676 N.W.2d at 277.



The court also noted Restatement (Second) of Torts § 388 cmt. k, which it characterized as follows:

Comment k to section 388 . . . emphasizes the importance of special knowledge of the supplier, stating that a dangerous condition may be one which only persons of special experience would realize to be dangerous. In such case, if the supplier, having such special experience, knows that the condition involves danger and has no reason to believe that those who use it will have such special experience as will enable them to perceive the danger, he is required to inform them of the risk of which he himself knows and which he has no reason to suppose that they will realize.

676 N.W.2d at 277 n.6.

### 3. Sophisticated Intermediary

The sophisticated intermediary defense arises in cases where it is highly impractical for the supplier to directly warn the end user of the product. The sophisticated intermediary defense, which is a variation of the sophisticated user defense, focuses on the employer's sophistication and is based on the presumption that employers will act in the best interests of their employees. The court characterized as a separate defense, and noted that it is often joined with the "bulk supplier" defense, because in those cases direct warnings to the end users are not practical.

The supreme court noted the parameters of the defense:

[S]ome courts have held that a product supplier has no duty to warn the ultimate user where either of two situations is present: (1) the end user's employer already has a full range of knowledge of the dangers, equal to that of the supplier or (2) the supplier makes the employer knowledgeable by providing adequate warnings and safety instructions to the employer.

676 N.W.2d at 277-78.

The court then distinguished the defense from the learned intermediary defense:

Although the sophisticated intermediary defense has characteristics similar to the learned intermediary defense, the sophisticated intermediary defense is generally only available where the supplier can show that it used reasonable care in relying upon the intermediary to give the warning to the end user. As explained in comment n to section 388 of the Restatement (Second), such a showing requires consideration of the purpose for which the product is to be used, the magnitude of the risk, the burden of providing direct warnings to end users and the reliability of the intermediary as a conduit . . .



676 N.W.2d at 278.

The court noted that some courts have expressed reluctance in extending the rationale of the sophisticated user defense to the sophisticated intermediary, but that other courts have recognized the defense, especially in cases where it is raised in combination with the bulk supplier defense, because of the burden on the supplier of providing warning to end users. The court quoted extensively from *Kennedy v. Mobay Corp.*, 84 Md.App. 397, 579 A.2d 1191, 1199 (1990), *aff'd*, 325 Md. 385, 601 A.2d 123 (1992), a Maryland Court of Special Appeals opinion, because it provided a good overview of the defense:

Part of the problem that may lead some to look askance at the [sophisticated intermediary] defense is in the language that some courts have used to describe it, in particular the notion that, where the elements or prerequisites of it exist, the supplier is absolved of any duty to warn ultimate users. That notion is not only unnecessary to the defense but in fact is inconsistent with the rationale of comment n to Restatement 388. There is a duty to warn of defects or propensities that make a product hazardous, and that duty does extend ordinarily to those who may reasonably be expected to use or come into harmful contact with the product. It is not a duty, we think, from which the supplier can be entirely absolved. The question, rather, is, what conduct will suffice to discharge that duty?

Viewed in that context, the defense is not only logical but necessary. Where it is impracticable for the supplier to give adequate warnings directly to all who may use or come into contact with the product, some substitute for such direct warnings is required, even in strict liability cases. Otherwise, . . . strict liability would become in effect, absolute liability. As comment n to Restatement 388 makes clear, the focus remains on the conduct of the supplier, but that conduct is judged in light of the circumstances. Among those circumstances are the feasibility of giving direct warnings to all who are entitled to them and, where that is not feasible, whether the supplier acted in a manner reasonably calculated to assure either that the necessary information would be passed on to the ultimate handlers of the product or that their safety would otherwise be attended to. In such a situation, that is all that reasonably can be asked and it is all we think, that the law requires.

Notwithstanding the more detailed exposition of the defense, the court in *Gray* said that it was unnecessary to decide the full scope of the defense based on the record because genuine issues of material fact precluded the grant of summary judgment on the issue. 676 N.W.2d at 278–79. The court noted that Badger Mining provided Smith Foundry, the plaintiff's employer, with a general warning of silicosis dangers, but it did not provide warnings concerning the ineffectiveness of disposable respirators or instruct that it should use only high efficiency respirators. The court also noted that the warning fell short of the federal require-

ment that the warning include precautions “known to the chemical manufacturer,” including ones relating to “personal protection equipment.” 676 N.W.2d at 279, citing 29 C.F.R. § 1910.1200 (2003).

The court noted that “[g]enerally, the adequacy of a warning is a fact question for the jury.” 676 N.W.2d at 279. The court also concluded that there were genuine issues of material fact concerning whether Smith Foundry relied on the safety information provided to it by Badger Mining when Smith made safety recommendations to its employees. The court concluded that “[i]n such circumstances, the issue of reliance would best be left for a jury determination.” 676 N.W.2d at 280.

#### 4. Bulk Supplier

The bulk supplier defense also has its origins in Restatement (Second) of Torts § 388. The court in *Gray* characterized it as “a specialized version of the sophisticated intermediary defense.” 676 N.W.2d at 280. The defense permits a supplier of material delivered in bulk to satisfy its duty to warn the end user by warning the buyer of the product’s dangerous condition.

As applied, the court recognized that the defense applied because Badger Mining delivered its product in bulk in trucks, requiring the company to warn every end user of the product would be costly and impossible in some cases. The court, however, thought that genuine issues of material fact existed, just as they did with respect to the sophisticated intermediary defense. The court noted that it would be unreasonable for a bulk supplier to rely on the employer to warn its employees if the employer was not provided with adequate warnings by the supplier. That open issue prevented the grant of summary judgment on the bulk supplier defense.

#### 5. The Raw Materials/Component Product Supplier Defense

The court drew this defense from the Restatement (Third) of Torts: Products Liability § 5 (1998), which applies “to suppliers of inherently safe raw materials that are used as a component in a final product.” 676 N.W.2d at 280–81. Comment b to section 5 explains the defense:

[W]hen a sophisticated buyer integrates a component into another product, the component seller owes no duty to warn either the immediate buyer or the ultimate consumers of dangers arising because the component is *unsuited* for the special purpose to which the buyer puts it.

676 N.W.2d at 281 (the court’s emphasis).

Badger Mining argued that it sold a raw material that was not dangerous at the time it was sold, that the material could be put to multiple uses, and that it should therefore not have a duty to warn

against the multiple ways in which the product could potentially be dangerous. The court distinguished two cases, *In re TMJ Implants Products Liability Litigation*, 872 F.Supp. 1019, 1025 (D. Minn. 1995) (polytetrafluoroethylene used as a component in temporomandibular joint implant resulted in injury to implant patients) and *Cimino v. Raymark Industries, Inc.*, 151 F.3d 297, 335 (5th Cir. 1998) (asbestos supplied to a manufacturer used in insulating sheets sold to end consumers), on the basis that the silica used in the foundry process, and not the finished product, was the danger faced by the foundry workers.

The court in *Gray* noted that even where the defense applies, “the supplier must still provide an adequate warning to the intermediate purchaser.” 676 N.W.2d at 281. The manufacturer has a duty to relay that information to the purchaser if the manufacturer has superior knowledge of the danger. The court noted that there was evidence in the case that Badger Mining inadequately relayed information concerning recommended respirators to Smith Foundry.

The court concluded its analysis of the case by noting the limitations of its decision:

Our decision is limited by the unique procedural posture of this case and the particular facts in the record. Because genuine issues of material fact precluded the district court from deciding, as a matter of law, that Badger Mining had no duty to warn or that its warning to Smith Foundry discharged its duty, the district court did not err in denying summary judgment.

676 N.W.2d at 281–82. The court therefore reversed the court of appeals and reinstated the judgment of the district court.



## CIVJIG 75.30

## MANUFACTURING DEFECTS

## Deciding when a product is defective

A product is in a defective condition unreasonably dangerous to (the ordinary user or consumer) (the ordinary user's or consumer's property) if he or she could not have anticipated the danger the product created.

In deciding if the danger could have been anticipated, assume the user or consumer had the knowledge common to the community about the product's characteristics and common use.

The defect in the product may be caused by the way it was (manufactured) (assembled) (inspected) (packaged) (tested).

[A product is in a defective condition unreasonably dangerous to (the ordinary user or consumer) (the ordinary user's or consumer's property) when the product departs from its intended design, even though all possible care was exercised in the preparation and marketing of the product.]

---

USE NOTE

This jury instruction should be utilized only in cases where the plaintiff's theory of recovery is based on a manufacturing flaw in the product in question. In cases involving design defects or inadequate warnings, only the single instructions in CIVJIG 75.20 (Design Defect) and CIVJIG 75.25 (Duty to Warn) should be given, whether the underlying theory is negligence or strict liability. However, in manufacturing flaw cases, it may be appropriate to instruct on negligence, in addition to the strict liability instruction, where warranted by the evidence. This instruction is used to determine whether the defendant is strictly liable for selling a product with a manufacturing flaw. CIVJIG 75.35 (Liability of Manufacturer or Seller of Goods—Negligence) should be used in cases where the evidence warrants submitting the negligence issue to the jury. The special verdict form should be appropriately tailored to require a finding of a defective condition in the product before the jury is permitted to consider the question of whether the seller or manufacturer was negligent. *See* CIVSVF 75.92 (Manufacturing Defect Theory).

The bracketed language incorporates the standard for determining



manufacturing defects in Restatement (Third) of Torts: Products Liability § 2(a) (1998). It is an alternative standard to the consumer expectation standard. It has been neither accepted nor rejected by the Minnesota appellate courts.

### AUTHORITIES

This standard is based upon the Restatement (Second) of Torts § 402A cmt. i (1965). In *Bilotta v. Kelley Co., Inc.*, 346 N.W.2d 616 (Minn. 1984), appeal after remand, 358 N.W.2d 679 (Minn. Ct. App. 1984), rev. denied, (Minn. March 13, 1985), the court indicated that this instruction would be appropriate in cases involving manufacturing flaws:

[The instruction] was formulated for the qualitatively different product defect of inadvertent manufacturing flaws. In such a case an objective standard exists—the flawless product—by which a jury can measure the alleged defect. Thus, in manufacturing flaw cases, the defect is proved by focusing on the condition of the product. The . . . consumer expectation instructions, which focus on the condition of the product, are appropriate for this type of case, since the manufacturer's conduct is irrelevant. 346 N.W.2d at 621–22.

The instruction is consistent with the Restatement (Second) of Torts standard. The comments to section 402A state that for a product to be “unreasonably dangerous,” it “must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.” See Restatement (Second) of Torts § 402A cmt. i.

The Committee expresses no opinion as to whether it would be appropriate to use other standards, such as that drawn from *Farr v. Armstrong Rubber Co.*, 288 Minn. 83, 179 N.W.2d 64 (1970) (“a product is defective if it fails to perform reasonably, adequately, and safely the normal, anticipated, or specified use to which the manufacturer intends that it be put”). 288 Minn. at 89, 179 N.W.2d at 68, or the Restatement (Third) of Torts: Products Liability § 2(a) (1998), which states that there is a manufacturing defect “when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product.”

### Research References

*West's Key Number Digest*  
Products Liability ⇨8, 96

*Legal Encyclopedias*  
C.J.S., Motor Vehicles §§ 429 to 430; Products Liability §§ 11 to 15, 17, 206 to 217

## CIVJIG 75.31

INTERMEDIARIES OTHER THAN  
MANUFACTURERS

## Duty of Intermediary

A(n) (intermediary in the chain of manufacture and distribution other than the manufacturer) has a duty to (sell) (lease) a product that is not in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (property exposed to) the product when the product:

1. Is used as intended, or
2. Is used in a way that the manufacturer could reasonably have anticipated.

---

USE NOTE

This instruction is intended for use in cases where an intermediary in the chain of manufacture and distribution is subject to liability under a products liability theory. It explains that intermediaries other than the product manufacturer also have a duty not to sell products that are in a defective condition unreasonably dangerous to those who may be injured in person or property by their products. It will be applicable in cases where the manufacturer is not a party to the litigation. It will also apply in cases where one of the exceptions to M.S.A. § 544.41, subd. 3, is applicable. See CIVJIG 75.65. The specific intermediary in issue, whether a product retailer, wholesaler, lessor, or other intermediary, should be substituted for the parenthetical language.

## AUTHORITIES

Intermediaries in the chain of manufacture and distribution other than manufacturers are subject to products liability claims if they sell defective products. *E.g.*, *Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 158 (Minn. 1982) (Simonett, J., concurring in part and dissenting in part) (strictly liable intermediaries described as “vicarious” or “derivative” rather than comparative)); *O’Laughlin v. Minnesota Natural Gas Co.*, 253 N.W.2d 826, 832 (Minn. 1977) (contractor strictly liable for defective installation of furnace); *Farr v. Armstrong Rubber Co.*, 288 Minn. 83, 89, 179 N.W.2d 64, 68 (1970) (commercial sellers are subject to strict liability principles under Restatement (Second) of Torts § 402A

(1965)); *In re Shigellosis Litigation*, 647 N.W.2d 1, 6 (Minn. Ct. App.2002) (noting that the practical effect of strict liability principles is to hold a seller jointly and severally liable for the manufacturer's causal fault, but noting also that M.S.A. § 544.41 mitigates that effect); *Marcon v. Kmart Corp.*, 573 N.W.2d 728, 730 (Minn.App.1998) (Kmart strictly liable under failure to warn theory where manufacturer was bankrupt.), *rev. denied* (Minn. Apr. 14, 1998).

In *Lyzhoft v. Waconia Farm Supply*, 2013 WL 3368832 (Minn. Ct. App. July 8, 2013), the Minnesota Court of Appeals considered the issue of whether products liability theory applies to commercial bailments, even though the court held that there was no commercial bailment in the case. The court noted that the Restatement (Third) of Torts: Products liability §§ 1 and 20(b) (1998), expressly extend strict products liability to commercial bailors and lessors, a position that other jurisdictions have also taken, but absent controlling Minnesota Supreme Court authority, the court declined to hold that strict liability applied to commercial bailments.



## CIVJIG 75.32

**PROOF OF DEFECT—CIRCUMSTANTIAL  
EVIDENCE****Deciding if a product is in a defective condition unreasonably dangerous**

You may find that the (product) was in a defective condition unreasonably dangerous if you find that:

1. The event that caused the injury would ordinarily occur only because of a defective condition in the (product), and
2. (Defendant) was responsible for a condition in the product that was the cause of the injury, and
3. The event that caused the injury was not caused by anything other than a defect in the (product) that existed at the time of the product's sale by (defendant).

---

**USE NOTE**

This instruction is intended for use in cases where there is no direct proof of a product defect. It is based upon the Minnesota Supreme Court's opinion in *Schafer v. JLC Food Systems, Inc.*, 695 N.W.2d 570, 577 (Minn. 2005). Its primary application will be in cases involving manufacturing defect and defective food cases, where the product in question is typically unavailable for examination. This instruction should be given immediately after CIVJIG 75.30 (Manufacturing Defects) or CIVJIG 75.60 (Food).

**AUTHORITIES**

In *Schafer v. JLC Food Systems, Inc.*, 695 N.W.2d 570, 577 (Minn. 2005), a defective food case in which the injury-causing cause object could not be identified, the Minnesota Supreme Court held that summary judgment be avoided if the following elements are established:

- (1) the injury-causing event was of a kind that would ordinarily only occur as a result of a defective condition in the food product;
- (2) the defendant was responsible for a condition that was the cause of the injury; and
- (3) the injury-causing event was not caused by



anything other than a food product defect existing at the time of the food product's sale. In order to forestall summary judgment, each of the three elements must be met.

See also *Lee v. Crookston Coca-cola Bottling Co.*, 290 Minn. 321, 330–31, 188 N.W.2d 426, 433 (1971); *Holkestad v. Coca-Cola Bottling Co.*, 288 Minn. 249, 256–57, 180 N.W.2d 860, 865–66 (1970). Such cases are in effect strict liability versions of *res ipsa loquitur*. *Western Surety and Casualty Co. v. General Electric Co.*, 433 N.W.2d 444, 447 (Minn. Ct. App. 1988) (allegedly defective car headlight), rev. denied (Minn. Feb. 22, 1988).

In commenting on the application of *res ipsa loquitur*, the supreme court has noted that the doctrine has particular force in exploding bottle cases or cases involving similarly dangerously defective products “where the product is destroyed by the defect, which is also obliterated.” *Cerepak v. Revlon, Inc.*, 294 Minn. 268, 272, 200 N.W.2d 33, 36 (1972), quoting *Lee v. Crookston Coca-Cola Bottling Co.*, 290 Minn. 321, 333, 188 N.W.2d 426, 434 (1971).

The court in *Schafer*, 695 N.W.2d at 576–77, also noted that its approach is consistent with Restatement (Third) of Torts: Products Liability § 3 (1998), which reads as follows:

It may be inferred that the harm sustained by the plaintiff was caused by a product defect existing at the time of sale or distribution, without proof of a specific defect, when the incident that harmed the plaintiff:

(a) was of a kind that ordinarily occurs as a result of product defect; and

(b) was not, in the particular case, solely the result of causes other than product defect existing at the time of sale or distribution.

The comments note that the most common application of section 3 will be in manufacturing defect cases, and then in cases where the product in question is lost or destroyed. Restatement (Third) of Torts § 3 cmt. b. Minnesota would appear to take the same position. See *Cerepak v. Revlon*, 294 Minn. 268, 272, 200 N.W.2d 33, 36 (1972) (availability of deodorant bottle that broke and caused injury to plaintiff's hand militated against application of *res ipsa loquitur*).

#### Research References

*West's Key Number Digest*  
Products Liability ⇨75.1, 82.1, 96.1

*Legal Encyclopedias*  
C.J.S., Products Liability §§ 166 to 172, 181, 206 to 215

**CIVJIG 75.35****LIABILITY OF MANUFACTURER OR SELLER OF  
GOODS—NEGLIGENCE****Definition of “negligence”**

Negligence is the failure to use reasonable care.

Ask yourself what a reasonable person would have done in these circumstances.

Negligence occurs when a person:

1. Does something a reasonable person would not do; or
2. Fails to do something a reasonable person would do.

**Duty of the manufacturer or seller to use reasonable care**

A (manufacturer) (intermediary) of a product has a duty to use reasonable care to protect (people who are) (property that is) likely to be exposed to unreasonable risk of harm.

A (manufacturer) (intermediary) must use reasonable care in the (manufacture) (assembly) (inspection) (packaging) (testing) of the product to protect (users or consumers) (users' or consumers' property).

“Reasonable care” is the care a reasonable person would use under the same or similar circumstances.

[A manufacturer must keep up with knowledge and technology in the field. You should decide whether the manufacturer used reasonable care in the light of that duty.]

---

**USE NOTE**

This instruction should be given in two types of cases. The first is where the defendant is a product manufacturer and the plaintiff's the-

ory of recovery is based on a manufacturing flaw. In such cases, the plaintiff is entitled to jury instructions on both strict liability (CIVJIG 75.30) and negligence theories. The second is in cases where a defendant is an intermediary other than the manufacturer. If the plaintiff's theory of recovery is based on a design defect or inadequate warnings or instructions, the plaintiff may attempt to prove that an intermediary other than the manufacturer failed to exercise reasonable care in selling the product. The specific intermediary in issue, whether a product retailer, wholesaler, lessor, or other intermediary, should be substituted for the parenthetical language.

### AUTHORITIES

A manufacturer of products has a duty to exercise reasonable care in the manufacture of its products, including reasonable care in the manufacture, testing, inspection, and assembly of those products. See *Ford Motor Co. v. Zahn*, 265 F.2d 729, 731 (8th Cir. 1959); *Parks v. Allis-Chalmers Corp.*, 289 N.W.2d 456, 460 (Minn. 1979); *Rosin v. International Harvester Co.*, 262 Minn. 445, 450, 115 N.W.2d 50, 53 (1962); *Lovejoy v. Minneapolis-Moline Power Implement Co.*, 248 Minn. 319, 325, 79 N.W.2d 688, 693 (1956). The manufacturer's failure to fulfill the duty will render it liable for injuries suffered by the purchaser, by a person who the manufacturer should expect will use the product, or by persons who may reasonably be expected to be in the vicinity of its use. E.g., *Bjorklund v. Hantz*, 296 Minn. 298, 301, 208 N.W.2d 722, 724 (1973) (per curiam), overruled in part on other grounds, *Tolbert v. Gerber Indus., Inc.*, 255 N.W.2d 362 (Minn. 1977); *McCormack v. Hanks-craft Co.*, 278 Minn. 322, 331-332, 154 N.W.2d 488, 496 (1967).

The Minnesota Supreme Court in advancing a "reasonable care balancing approach" in strict liability cases involving design defects has enunciated what is essentially a negligence standard. See *Bilotta v. Kelley Co., Inc.*, 346 N.W.2d 616, 622 (Minn. 1984), appeal after remand, 358 N.W.2d 679 (Minn. Ct. App. 1984). Given the jury instruction that would be given in such a case, a separate instruction on negligence in design defect cases could only result in confusion. See 346 N.W.2d at 626-27 (Simonett, J., concurring). This negligence instruction is intended to apply in cases involving manufacturing flaws, where strict liability theory and negligence theory are distinct, given the fact that no actual negligence need be demonstrated in such cases. See 346 N.W.2d at 621-22.

The manufacturer is not liable for injuries resulting from a use of the chattel for a purpose or in a manner that could not reasonably have been foreseen or anticipated by him. See *Rosin*, 262 Minn. at 451, 115 N.W.2d at 54; *Lovejoy*, 248 Minn. at 326, 79 N.W.2d at 693-94.

A seller of a chattel manufactured by a third party may also be liable if the seller knows or has reason to know that the chattel will be dangerous to others. In *Erickson v. American Honda Motor Co.*, 455



N.W.2d 74, 77–78 (Minn. Ct. App. 1990), the court of appeals applied Restatement (Second) of Torts § 401 (1965) to hold a recreational vehicle dealer liable. That section reads as follows:

A seller of a chattel manufactured by a third person who knows or has reason to know that the chattel is, or is likely to be, dangerous when used by a person to whom it is delivered or for whose use it is supplied, or to others whom the seller should expect to share in or be endangered by its use, is subject to liability for bodily harm caused thereby to them if he fails to exercise reasonable care to inform them of the danger or otherwise protect them against it.

The seller may be liable based upon a failure to inspect a product “if it has actual or constructive knowledge that the product is dangerous.” *Anderson v. Shaughnessy*, 519 N.W.2d 229, 232 (Minn. Ct. App. 1994), reversed on other grounds, 526 N.W.2d 625 (Minn. 1995); *Gorath v. Rockwell International, Inc.*, 441 N.W.2d 128, 132 (Minn. Ct. App. 1989). In *Gorath*, the court of appeals used the Restatement (Second) of Torts § 402 (1965) as the measure of the liability of the seller of a used paper cutter for failure to inspect. Section 402 states that:

A seller of a chattel manufactured by a third person, who neither knows nor has reason to know that it is, or is likely to be, dangerous, is not liable in an action for negligence for harm caused by the dangerous character or condition of the chattel because of his failure to discover the danger by an inspection or test of the chattel before selling it.

The comments following section 402 state that it must be read in connection with Restatement (Second) of Torts § 400 (1965). That section reads as follows: “One who puts out as his own product a chattel manufactured by another is subject to the same liability as though he were its manufacturer.” Section 400, which initially posits liability in a case where a person sells a chattel manufactured by another, is thus limited by section 402 to cases where the seller knows or has reason to know that the chattel is dangerous.

Restatement (Third) of Torts § 14 (1998) states that “[o]ne engaged in the business of selling or otherwise distributing products who sells or distributes as its own a product manufactured by another is subject to the same liability as though the seller or distributor were the product’s manufacturer.”

The issue of whether a seller either knew or should have known of the product defect is usually a jury question. See *Anderson v. Shaughnessy*, 519 N.W.2d 229, 232 (Minn. Ct. App. 1994), rev’d on other grounds, 526 N.W.2d 625 (Minn. 1995); *Crothers ex rel. Crothers v. Cohen*, 384 N.W.2d 562, 565 (Minn. Ct. App. 1986), rev. denied (Minn. June 13, 1986).

In *In re Shigellosis Litigation*, 647 N.W.2d 1, 9 (Minn. Ct. App.



2002), the court of appeals held that it was not error to refuse to give this instruction in a case involving the sale of contaminated parsley because the party seeking contribution from an intermediate seller “failed to produce evidence establishing a standard of care applicable to purchasers and resellers of produce.”

**Research References**

*West's Key Number Digest*

Products Liability ⅈ6, 10, 96

*Legal Encyclopedias*

C.J.S., Motor Vehicles §§ 429 to 430; Products Liability §§ 9, 15, 18 to 20, 206 to 217

**CIVJIG 75.40****MANUFACTURER'S DUTY TO PROVIDE POST-SALE WARNINGS****Duty of a manufacturer to provide post-sale warnings**

A manufacturer has a duty to use reasonable care to provide post-sale warnings of product dangers to (persons who) (property that) may be exposed to harm when the product:

1. Is used as intended, or
2. Is used in a way that the manufacturer could have reasonably anticipated.

**Deciding if the manufacturer used reasonable care**

"Reasonable care" is the care you would expect a reasonable person to use in the same or similar circumstances.

You must decide if a manufacturer using reasonable care would have provided post-sale (warnings) (instructions) for the safe use of the product.

A manufacturer must keep up with knowledge and technology in the field. The duty to use reasonable care to provide post-sale (warnings) (instructions) must be judged by the scientific knowledge and advances reasonably available between the time the product was manufactured and the date of the injury.

In deciding whether the manufacturer should have provided post-sale (warnings) (instructions), consider all the facts and circumstances, including, among others:

1. The likelihood that harm would result from use of the product
2. The seriousness of the harm that would result

3. The cost and ease of providing post-sale (warnings) (instructions) that would avoid the harm
4. Whether the manufacturer considered knowledge and technology in the field.

---

### USE NOTE

The post-sale warning instruction must be read in light of the thresholds the Minnesota Supreme Court has established before such an instruction may be given. In *Hodder v. Goodyear Tire & Rubber Co.*, 426 N.W.2d 826, 833 (Minn. 1988), cert. denied, 492 U.S. 926, 109 S.Ct. 3265, 106 L.Ed.2d 610 (1989), the supreme court stated that the “continuing duty to warn arises only in special cases.” The important factors in *Hodder* were as follows: (1) the seller either knows or reasonably should know that the product poses a substantial risk of harm; (2) the product creates a serious risk of injury or death; (3) the company remains in the business, even if it does not continue to sell the specific product in question; and (4) the company undertook a duty to warn of the dangers presented by the product. 426 N.W.2d at 833. While these factors are specific to *Hodder*, there may be other “special circumstances” that will justify a post-sale failure to warn instruction. Other examples are discussed in the Authorities.

Note that the Minnesota Supreme Court’s decision in *Hodder* was limited to serious risk of personal injury or death. In *T.H.S. Northstar Associates v. W. R. Grade and Co.*, 66 F.3d 173, 177 (8th Cir. 1995), the Eighth Circuit applied the theory to an asbestos removal case. This jury instruction is limited to personal injury. If the trial court should determine that the post-sale failure to warn theory applies to property damage, the instruction may be modified accordingly.

### AUTHORITIES

Restatement (Third) of Torts: Products Liability § 10 (1997) takes the following position on post-sale failure to warn:

#### Liability of Commercial Product Seller or Distributor for Harm Caused by Post-Sale Failure to Warn

(a) One engaged in the business of selling or otherwise distributing products is subject to liability for harm to persons or property caused by the seller’s failure to provide a warning after the time of sale or distribution of a product when a reasonable person in the seller’s position would provide such a warning.

(b) A reasonable person in the seller’s position would provide a warning after the time of sale if:

(1) the seller knows or reasonably should know that the product poses a substantial risk of harm to persons or property; and

(2) those to whom a warning might be provided can be identified and can reasonably be assumed to be unaware of the risk of harm; and

(3) a warning can be effectively communicated to and acted on by those to whom a warning might be provided; and

(4) the risk of harm is sufficiently great to justify the burden of providing a warning.

In *Hodder v. Goodyear Tire & Rubber Co.*, 426 N.W.2d 826 (Minn. 1988), cert. denied, 492 U.S. 926, 109 S.Ct. 3265, 106 L.Ed.2d 610 (1989), the supreme court held that Goodyear had a post-sale obligation to warn of the dangers its multi-piece rim assembly created:

On the facts of this case, we hold that a continuing post-sale duty to warn existed and was adequately submitted . . . Hundreds of thousands of K-rims have been used in millions of tire changes over the years without incident; of the 134 or so K-rim explosions which did occur, many are explained by improper servicing or misuse. Goodyear steadfastly maintains its K-rim is a safe product if used properly. Nevertheless, it became evident by the late 1950s that K-rims could be temperamental; that the margin of error in servicing the K-rim assembly was dangerously small and it might explosively separate with seemingly little provocation; that when explosions did occur, serious injury or death usually resulted; and, therefore, that great care was required in the handling and servicing of K-rims. Further, Goodyear has continued over the years in the tire rim business, and, although all K-rim production was discontinued by 1969, Goodyear continued to advertise its K-rims as late as 1977, and has continued to sell tires and tubes for use with used K-rims. Finally, Goodyear undertook a duty to warn of K-rim dangers. Under these circumstances, it seem to us that Goodyear has a continuing duty to instruct and to warn, so that users of used K-rims would be apprised of safety hazards which, at an earlier time, were not fully appreciated. A continuing duty to warn arises only in special cases. We think this is such a case.

426 N.W.2d at 833.

The court's position is similar to the Restatement's approach, in part. In *Hodder*, the defendant knew as early as the late 1950s that there were problems with the rims, including the risks of serious injury or death. The defendant continued in business and continued to be connected with the K-rims. Although it had stopped production of the rims



in 1969, Goodyear continued to advertise the rims until 1977, and to sell tires and rims for use with the rims. It also undertook to warn of K-rim dangers. Prior warnings of the dangers involved in the use of the K-rims were quite graphic.

In *T.H.S. Northstar Associates v. W.R. Grace and Co.*, 66 F.3d 173, 177 (8th Cir. 1995), an asbestos removal case, the Eighth Circuit held that the defendant manufacturer of fireproofing material had a continuing duty to warn under the circumstances of the case. The defendant argued that the necessary "special circumstances" required by *Hodder* were not present in the case, but the court disagreed:

In *Hodder*, the Minnesota Supreme Court imposed such a duty based upon the following facts: (1) the manufacturer insisted its product was safe if used properly; (2) it became evident to the manufacturer over time that great care was required in the handling and servicing of the product, or serious injury would occur; and (3) the manufacturer continued in the business of selling related products and undertook a duty to warn users of post-sale hazards . . . . We agree with the district court that the evidence in this case justified submitting the continuing-duty-to-warn issue to the jury. In particular, Grace's pamphlets, letters, and extensive publicity discussing the risks of asbestos-containing materials and purporting to advise building owners on how to manage that risk raise a jury issue under *Hodder* whether to impose a continuing legal duty to warn.

66 F.3d at 177.

In *Ramstad v. Lear Siegler Diversified Holdings Corp.*, 836 F.Supp. 1511, 1517 (D.Minn. 1993), a case involving injuries sustained by a farmer when his foot slipped into the intake of a grain auger, the United States District Court for the District of Minnesota held that there was no continuing duty to warn on the part of the manufacturer. The court read the "special circumstances" in *Hodder* slightly differently:

The special circumstances in *Hodder* included: (1) the defendant's knowledge of problems with the product since the later 1950s, including the knowledge that the product might explode with little provocation; (2) the hidden nature of the danger; (3) the fact that when explosions did occur, serious injury or death usually resulted; (4) defendant remained in that line of business, continued to sell parts for use with the product and had advertised the product within five years of the plaintiff's injury; and (5) defendant had undertaken a duty to warn of product dangers.

836 F.Supp. at 1517. The court's analysis of the special factors led it to hold that there was no duty to warn of the dangers presented by the grain auger:

The court concludes that the special factors which warranted a

continuing duty to warn in *Hodder* do not exist in the instant case. Hutchinson had notice of only a handful of other accidents. The danger associated with the auger was not hidden and was known to users. There is no evidence that Hutchinson had undertaken a duty to warn. Hutchinson also adopted a new intake design and ceased marketing a shield for grain augers. The only factor that favors imposing a continuing duty to warn in this case is the gravity of the resulting harm. That factor alone, however, is insufficient to satisfy the special circumstances required by *Hodder*.

836 F.Supp. at 1517. See also *Kociemba v. G.D. Searle & Co.*, 707 F.Supp. 1517, 1528 (D.Minn. 1989).

The third factor in section 10, that the warning can be effectively communicated to and acted on by those to whom a warning might be provided, is intended to ensure that the seller is reasonably able "to communicate the warning to those identified as appropriate recipients." Restatement (Third) of Torts § 10 cmt. g (1997). If there are sales records identifying the purchasers, then a direct warning might be feasible. If not, the seller may have to rely on the public media for warnings. Also, as the size of the group to be warned increases, so does the cost. Restatement (Third) of Torts § 10 cmt. g (1997). The ability of the seller to warn seems implicit in Minnesota law. *E.g.*, *Huber v. Niagara Mach. & Tool Works*, 430 N.W.2d 465, 467 (Minn. 1988); *Balder v. Haley*, 399 N.W.2d 77, 81 (Minn. 1987); *Germann v. F.L. Smithe Mach. Co.*, 395 N.W.2d 922, 924 (Minn. 1986).

The fourth factor in the Restatement is whether the risk of harm is sufficiently great to justify a warning. That factor is implicit in the Minnesota cases that emphasize that the duty to warn issue is a question of law for the courts to decide in the first instance. In *Hodder*, it seems clear that the court's conclusion that liability could be based on a post-sale obligation to warn was based on a balancing of the interests that prompted the court's conclusion that the post-sale duty to warn should be imposed only in special cases, and that this was one of them. The Restatement makes explicit what seems to be implicit in the Minnesota warning cases and the federal cases involving post-sale duty to warn issues. A balancing of interests is important in determining whether the post-sale duty to warn exists.

Comment a, following Restatement (Third) of Torts § 10 (1998), states that:

As with all rules that raise the question whether a duty exists, courts must make the threshold decisions that, in particular cases, triers of fact could reasonably find that product sellers can practically and effectively discharge such an obligation and that the risks of harm are sufficiently great to justify what is typically a substantial post-sale undertaking. In deciding whether a claim

based on breach of a post-sale duty to warn should reach the trier of fact, the court must determine whether the requirements in Subsection (b)(1) through (4) are supported by proof. The legal standard is whether a reasonable person would provide a post-sale warning. In light of the serious potential for overburdening sellers in this regard, the court should carefully examine the circumstances for and against imposing a duty to provide a post-sale warning in a particular case.

The risk-utility approach is specifically adopted in the post-sale warning jury instruction. It is consistent with the risk-utility approach in design defect and failure to warn cases.

#### **Research References**

*West's Key Number Digest*  
Products Liability ¶14, 96

*Legal Encyclopedias*  
C.J.S., Motor Vehicles §§ 429 to 430; Products Liability §§ 26 to 32, 206 to 217



**CIVJIG 75.45****BAILMENTS****The duty of a person providing or leasing an article**

A person (providing) (leasing) an article for pay must use reasonable care to make sure that the article is safe when the article:

1. Is used as intended, or
2. Is used in a way that could reasonably have been anticipated.

To be safe, the article must be free from:

1. Defects that the (provider) (lessor) knew about, or
2. Defects that he or she would have known about if he or she had done a reasonable inspection of the article, or
- [3. Defects that could have been eliminated by reasonable (preparation) (repair) of the article.]

"Reasonable care" is the care you would expect a reasonable person to use in the same or similar circumstances.

---

**USE NOTE**

Products liability theory may apply to a variety of transactions, including leases of products. This instruction may be utilized in cases involving bailments or leases. However, if the plaintiff asserts a strict liability theory against a defendant who is in the business of selling or leasing, the jury instructions on design defect (CIVJIG 75.20) and failure to warn (CIVJIG 75.25) should be given. *If those instructions are given, this instruction should not be given.*

**AUTHORITIES**

A bailment arises "when goods are delivered, without transferal of ownership, under an express or implied agreement that the goods will be returned." *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 387 (Minn.



Ct. App. 2004) (deposit of grain in a grain bank creates a bailment imposing duty of care in keeping grain in bank), citing *Wallinga v. Johnson*, 269 Minn. 436, 438, 131 N.W.2d 216, 218 (1964).

Where a bailor or lessor furnishes a defective chattel to a bailee or lessee for consideration, and such defect could have been discovered if the bailor or lessor had made a reasonable inspection, the bailor or lessor may be liable to the bailee or lessee for injuries proximately caused by such defect. See *Clark v. Rental Equip. Co., Inc.*, 300 Minn. 420, 427, 220 N.W.2d 507, 511 (1974); *Kothe v. Tysdale*, 233 Minn. 163, 168, 46 N.W.2d 233, 236 (1951); *Butler v. Northwestern Hosp.*, 202 Minn. 282, 285, 278 N.W. 37, 38 (1938); *Ferraro v. Taylor*, 197 Minn. 5, 9, 265 N.W. 829, 831 (1936). A bailor for hire is required not only to disclose to the bailee defects of which he has knowledge, but also to exercise affirmative care to inspect and prepare the chattel so that it is safe for its intended use. See W. Keeton, et al., *Prosser and Keeton on The Law of Torts* § 104 (5th ed. 1984).

Although the issue has been raised, the Minnesota Supreme Court has not yet decided whether strict products liability principles will apply to bailments and leases. See *Wegscheider v. Plastics, Inc.*, 289 N.W.2d 167, 170 (Minn. 1980). Other jurisdictions, however, have applied strict liability in such cases. See, e.g., *Price v. Shell Oil Co.*, 2 Cal.3d 245, 253, 85 Cal.Rptr. 178, 185, 466 P.2d 722, 727 (1970); *Stewart v. Budget Rent-A-Car Corp.*, 52 Haw. 71, 75, 470 P.2d 240, 243 (1970); *Cintrone v. Hertz Truck Leasing & Rental Service*, 45 N.J. 434, 452, 212 A.2d 769, 778-779 (1965). If strict liability is to be applied to such cases, the jury instructions on strict liability could be readily applied to bailments and leases.

The Restatement (Third) of Torts: Products Liability § 20, subjects certain product sellers and distributors to the products liability rules of the Restatement. The Restatement requires a sale of a product in a commercial context or an equivalent distribution:

(a) One sells a product when, in a commercial context, one transfers ownership thereto either for use or consumption or for resale leading to ultimate use or consumption. Commercial product sellers include, but are not limited to, manufacturers, wholesalers, and retailers.

(b) One otherwise distributes a product when, in a commercial transaction other than a sale, one provides the product to another either for use or consumption or as a preliminary step leading to ultimate use or consumption. Commercial nonsale product distributors include, but are not limited to, lessors, bailors, and those who provide products to others as a means of promoting either the use or consumption of such products or some other commercial activity.

(c) One also sells or otherwise distributes a product when, in a

commercial transaction, one provides a combination of products and services and either the transaction taken as a whole, or the product component thereof, satisfies the criteria in Subsection (a) or (b).

In *Lyzhotf v. Waconia Farm Supply*, 2013 WL 3368832, at \*3 (Minn. Ct. App. July 8, 2013) (unpub.), the Minnesota Court of Appeals noted that “[a]lthough the extension of strict products liability to commercial bailors appears to be consistent with Minnesota law, the law in other jurisdictions, and the Restatement (Third) of Torts, no Minnesota appellate court has extended strict liability to commercial bailors, lessors, or both.” The court declined to extend strict liability to commercial bailors, concluding that the task of extending the law fell to the supreme court or legislature.

#### Research References

*West's Key Number Digest*  
Bailment ☞9

*Legal Encyclopedias*  
C.J.S., Bailments §§ 37 to 45

## CIVJIG 75.50

## CAUSATION

## Definition of "direct cause"

A "direct cause" is a cause that had a substantial part in bringing about the (collision) (accident) (event) (harm) (injury).

---

USE NOTE

This instruction should be given after the relevant instructions on design defect, manufacturing flaw, failure to warn, or post-sale failure to warn.

## AUTHORITIES

The causation issue should be resolved according to the same causation standard used to resolve the causation issue in negligence cases. That ordinarily requires proof of causation as to each defendant in a products liability case. However, under the doctrine of alternative liability, an injured plaintiff may be entitled to recover where he cannot identify the product that caused his injury, by shifting the burden of proof to two or more defendants, if the plaintiff has named as defendants all persons who might have caused his injuries, and all defendants are proven to be at fault. However, the Minnesota courts have not accepted the theory of alternative liability.

In *Souder v. Owens-Corning Fiberglas Corp.*, 939 F.2d 647 (8th Cir. 1991), the Eighth Circuit held that the doctrine of alternative liability was not available under Minnesota law, in a case involving a claim against several asbestos manufacturers. "The Minnesota Court of Appeals explicitly rejected *Summers v. Tice*, 199 P.2d 1 (Cal. 1948) in *Leuer v. Johnson*, 450 N.W.2d 363, 365 (Minn. Ct. App. 1990), rev. denied, (Mar. 16, 1990), and *Souder's* cited cases do not persuade us that the Minnesota Supreme Court would rule differently than the *Leuer* court. Consequently, we hold that the doctrine of alternative liability is not available under Minnesota law." 939 F.2d at 650. *See also Bixler v. Avondale Mills*, 405 N.W.2d 428 (Minn. Ct. App. 1987), rev. dismissed (Minn. June 30, 1987).

## Research References

*West's Key Number Digest*  
Products Liability ¶15, 96

*Legal Encyclopedias*  
C.J.S., Motor Vehicles §§ 429 to 430; Products Liability §§ 33 to 35, 206 to 217



**CIVJIG 75.55****USEFUL LIFE****Definition of “useful life”**

The fact that the product may have outlived its useful life should be considered along with all the other evidence in deciding fault.

The “useful life” of a product is not how long it lasts but how long it is reasonably safe for use.

**Deciding useful life**

Decide the useful life of this product by considering the experience of users of similar products, taking into account:

1. Normal wear and tear
2. Deterioration from natural causes
3. The progress of the art, economic changes, inventions, and developments within the industry
4. The climate and other local conditions peculiar to the user
5. The policy of the user and similar users on repairs, renewals, and replacements
6. The useful life, stated by the designer, manufacturer, distributor, or seller in brochures or pamphlets provided with the product or in a notice attached to the product
7. Any modification of the product by the user.

---

**USE NOTE**

In *Hodder v. Goodyear Tire & Rubber Co.*, 426 N.W.2d 826, 832 (Minn. 1988), cert. denied, 492 U.S. 926, 109 S.Ct. 3265, 106 L.Ed.2d



610 (1989), the Minnesota Supreme Court stated that there is no need to submit a special verdict question on useful life. A "jury's evaluation of the useful life defense will be reflected in its answers to the special verdict questions on fault." The jury instructions relevant to a determination of fault in a products liability case are CIVJIG 75.20 (Design Defect), CIVJIG 75.25 (Duty to Warn), and CIVJIG 28.15 (Comparative Fault).

The defendant has the burden of proof on the useful life issue. The issue may be submitted to the jury on a special verdict question: "Did the injury sustained by the plaintiff occur after the expiration of the useful life of the product?"

### AUTHORITIES

The jury instruction tracks the Minnesota useful life statute, M.S.A. § 604.03, which provides as follows:

**Subdivision 1.** In any action for the recovery of damages for personal injury, death or property damage arising out of the manufacture, sale, use or consumption of a product, it is a defense to a claim against a designer, manufacturer, distributor or seller of the product or a part thereof, that the injury was sustained following the expiration of the ordinary useful life of the product.

**Subd. 2.** The useful life of a product is not necessarily the life inherent in the product, but is the period during which with reasonable safety the product should be useful to the user. This period shall be determined by reference to the experience of users of similar products, taking into account present conditions and past developments, including but not limited to (1) wear and tear or deterioration from natural causes; (2) the progress of the art, economic changes, inventions and developments within the industry; (3) the climatic and other local conditions peculiar to the user; (4) the policy of the user and similar users as to repairs, renewals and replacements; (5) the useful life as stated by the designer, manufacturer, distributor, or seller of the product in brochures or pamphlets furnished with the product or in a notice attached to the product; and (6) any modification of the product by the user.

*Hodder v. Goodyear Tire & Rubber Co.*, 426 N.W.2d 826 (Minn. 1988), cert. denied, 492 U.S. 926, 109 S.Ct. 3265, 106 L.Ed.2d 610 (1989) arose out of the explosion of a truck tire while the plaintiff was mounting the tire on a multi-piece rim assembly made by Goodyear. The trial court read M.S.A. § 604.03 to the jury, and the jury found that the rim's useful life had expired and that the plaintiff was not negligent in failing to have determined that the useful life had expired. The jury also found Goodyear liable for negligent failure to warn. The trial court ruled that the useful life defense did not apply because the jury's finding that Goodyear failed to provide adequate warnings with the rim meant that there never was a period during which the rim could be used with reasonable safety.

The supreme court disagreed with the trial court's interpretation of the statute. The supreme court's analysis of the issue is as follows:

The statute's useful life concept is ambiguous. It is not clear if useful life refers to the life of the particular product involved which caused the injury, or if the life of that particular product is to be measured by the useful life of all like products made by that particular manufacturer, or by the life of some generic product or industry norm. The statute seemingly tries to encompass all three approaches, but this presents problems. The particular product involved in the accident may conceivably have several different life spans depending on which measurement is used.

There are other problems. The statute surely is meant to cover a product originally nondefective but which becomes "defective" with age. But how long must a product last to avoid being labeled originally defective? Does the statute also cover an originally defective product? A product may be defective *ab initio*, but not cause injury until the normal life span of a nondefective like product expires. If these products are not covered, as the trial court ruled, the useful life statute is irrelevant to most products liability claims.

These problems, in turn, raise questions about the role of the user of the product (who may be the owner, a temporary user, or a hypothetical average person) in determining the product's useful life. *Hodder* points out the useful life definition relies on many of the same factors used to prove design defect, manufacturing defect and failure to warn, with the odd result that the same evidence is used to support a cause of action and to defeat it. Nevertheless, this may be exactly what the legislature intended. But *Hodder* also seems to say that the useful life defense incorporates a "reasonable person" standard of care, i.e., the defense is not operative unless the plaintiff user knows or should know the product is no longer reasonably safe to use. Goodyear counters by saying section 604.03 must be viewed as a statute of repose, i.e., the defense focuses entirely on the condition of the product and has "nothing to do with a person's conduct." Further, because the defense applies to "any action," even a user's injury attributable to a manufacturer's failure to warn is barred after the product's useful life has expired.

Notwithstanding Goodyear's claim, it seems to us that section 604.03 does have something to do with the particular person who is using the product \* \* \* .

This much is clear. There will be cases where a reasonably prudent user should know a product's useful life has expired and in instances where the user has no reason to know nor way of knowing. Goodyear argues that in either case, the user is barred from

recovery. We decline to adopt this construction. Expiration of useful life is a defense but we think the legislature has stopped short of saying it is an absolute defense, and it is not for us to take that step, especially in view of the mixed signals given by the statute.

We hold, therefore, that the expiration of a product's useful life under section 604.03 is a factor to be weighed by the jury in determining the fault of the manufacturer and the fault of the user. In other words, the statute emphasizes to the trier of fact the importance, in determining comparative liability, of considering whether the product has outlived its useful life. Section 604.03 should be read to the jury as part of its instructions, perhaps with a prefatory statement that the statutory defense, if found to be applicable, is to be considered, along with other factors, in evaluating the conduct of the manufacturer and user. There is no need for separate special verdict questions as were given in this case on useful life. The jury's evaluation of the useful life defense will be reflected in its answers to the special verdict questions on fault.

426 N.W.2d at 831–32.

#### Research References

*West's Key Number Digest*  
Products Liability ¶16, 96

*Legal Encyclopedias*  
C.J.S., Motor Vehicles §§ 429 to 430; Products Liability §§ 36, 206 to 217



## CIVJIG 75.60

## FOOD

## Deciding when food (a food product) is defective

Food (a food product) is in a defective condition unreasonably dangerous if an ordinary consumer would not reasonably expect the food (food product) to contain the (object) (substance) that caused the harm.

---

USE NOTE

Food and food products may be defective because of a manufacturing defect, design defect, failure to warn, or a statutory violation. This instruction applies only to manufacturing defects. If other defects are involved, then the appropriate instructions covering those defects should be given. *See* CIVJIG 75.20 (Design Defect); CIVJIG 75.25 (The Duty to Warn); and CIVJIG 25.45 (Violations of Nontraffic Statutes).

If a definition of “ordinary consumer” is needed, *see* CIVJIG 75.30 (Manufacturing Defects).

## AUTHORITIES

In *Schafer v. JLC Food Systems, Inc.*, 695 N.W.2d 570 (2005), the Minnesota Supreme Court followed the Restatement (Third) of Torts: Products Liability § 7 (1998), and rejected the so-called “foreign-natural” test and adopted the majority “reasonable expectation” test for determining whether a food product is defective. *Schafer v. JLC Food Systems, Inc.*, 695 N.W.2d (Minn. 2005). Section 7 of the Restatement reads as follows:

One engaged in the business of selling or otherwise distributing food products who sells or distributes a food product that is defective under § 2, § 3, or § 4 is subject to liability for harm to persons or property caused by the defect. Under § 2(a), a harm-causing ingredient of the food product constitutes a defect if a reasonable consumer would not expect the food product to contain that ingredient.

The court explained its position as follows:

Having considered the two tests and the approach taken by the Restatement, we conclude that the reasonable expectation test is the more appropriate test to follow. Instead of drawing arbitrary distinctions between foreign and natural substances that caused



harm, relying on consumers' reasonable expectations is likely to yield a more equitable result. After all, an unexpected natural object or substance contained in a food product, such as a chicken bone in chicken soup, can cause as much harm as a foreign object or substance, such as a piece of glass in the same soup. Therefore, we agree with the majority view and expressly adopt the reasonable expectation test as the standard for determining defective food products liability claims in Minnesota. Accordingly, when a person suffers injury from consuming a food product, the manufacturer, seller, or distributor of the food product is liable to the extent that the injury-causing object or substance in the food product would not be reasonably expected by an ordinary consumer. Whether the injury-causing object or substance in the food product is reasonably expected by an ordinary consumer presents a jury question in most cases.

695 N.W.2d at 575–76.

The primary issue in *Schafer* concerned the problem of proof in food cases. The plaintiff ate a piece of a muffin at a restaurant and when she swallowed she felt a sharp pain in her throat and a choking sensation. The scratch on her throat led to an infection. The court concluded that, consistent with its prior decisions, see *Lee v. Crookston Coca-Cola Bottling Co.*, 290 Minn. 321, 330–31, 188 N.W.2d 426, 433 (1971) and *Holkestad v. Coca-Cola Bottling Co.*, 288 Minn. 249, 257, 180 N.W.2d 860, 865 (1970), and Restatement (Third) of Torts: Products Liability (1998) § 3, circumstantial evidence may be used to establish a prima facie defective food product case when the specific object or substance that caused the harm cannot be identified, *Schafer*, 695 N.W.2d at 576, but that there are limitations on the use of circumstantial evidence:

[W]e hold that in defective food products cases a plaintiff may reach the jury, without direct proof of the specific injury-causing object or substance, when the plaintiff establishes by reasonable inference from circumstantial evidence that: (1) the injury-causing event was of a kind that would ordinarily only occur as a result of a defective condition in the food product; (2) the defendant was responsible for a condition that was the cause of the injury; and (3) the injury-causing event was not caused by anything other than a food product defect existing at the time of the food product's sale. In order to forestall summary judgment, each of the three elements must be met.

695 N.W.2d at 577. The requirements closely track the requirements of *res ipsa loquitur*, e.g., *Warrick v. Giron*, 290 N.W.2d 166, 169 (1981), except for the inference of negligence. The difference is in the first element. In a strict liability case the plaintiff must prove that the injury is one that would not ordinarily occur absent a defect in the product, whereas in a negligence case the plaintiff must establish that the injury is one that would not have occurred in the absence of negligence.

**Research References**

*West's Key Number Digest*

Food ☞ 25.1 to 25.18(2), 25.27

*Legal Encyclopedias*

C.J.S., Food §§ 78 to 97

## CIVJIG 75.65

## STRICT LIABILITY—AVOIDANCE

[The Committee recommends no instruction.]

---

USE NOTE

No instruction is recommended by the Committee. Rather, if an issue arises under M.S.A. § 544.41, special verdict questions should be tailored to the issues that have to be resolved to determine whether a product seller is entitled to avoid strict liability. A court shall not enter a dismissal order if the plaintiff can show one of the following:

1. The defendant had significant control over the design or manufacture of the product, or
2. The defendant provided instructions or warnings to the manufacturer about the product defect that caused the harm, or
3. There is evidence that the defendant knew about the defect that caused the harm, or
4. The defendant created the defect that caused the harm.

A finding that one of these factors is established, however, is not conclusive on the liability issue. While the evidence necessary to prove one of the factors may overlap significantly with evidence presented on a theory of liability, the jury must be instructed on the theories applicable to the seller in question, and the special verdict form must be structured to incorporate those theories.

## AUTHORITIES

M.S.A. § 544.41 (2014) provides that in a strict liability action commenced or maintained against a defendant other than the manufacturer, that party shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing the injury, death, or damage. Then, if the manufacturer of the product is solvent and subject to personal jurisdiction in Minnesota, the other party will be dismissed, subject to certain exceptions. The statute reads as follows:

**Subdivision 1.** In any product liability action based in whole or in part on strict liability in tort commenced or maintained against a defendant other than the manufacturer, that party shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing



injury, death or damage. The commencement of a product liability action based in whole or part on strict liability in tort against a certifying defendant shall toll the applicable statute of limitation relative to the defendant for purposes of asserting a strict liability in tort cause of action.

**Subd. 2.** Once the plaintiff has filed a complaint against a manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of a strict liability in tort claim against the certifying defendant, provided the certifying defendant is not within the categories set forth in subdivision 3. Due diligence shall be exercised by the certifying defendant in providing the plaintiff with the correct identity of the manufacturer and due diligence shall be exercised by the plaintiff in filing a law suit and obtaining jurisdiction over the manufacturer. The plaintiff may at any time subsequent to dismissal move to vacate the order of dismissal and reinstate the certifying defendant, provided plaintiff can show one of the following:

(a) That the applicable statute of limitation bars the assertion of a strict liability in tort cause of action against the manufacturer of the product allegedly causing the injury, death or damage;

(b) That the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect. Once the correct identity of the manufacturer has been given by the certifying defendant the court shall again dismiss the certifying defendant;

(c) That the manufacturer no longer exists, cannot be subject to the jurisdiction of the courts of this state, or, despite due diligence, the manufacturer is not amenable to service of process;

(d) That the manufacturer is unable to satisfy any judgment as determined by the court; or

(e) That the court determines that the manufacturer would be unable to satisfy a reasonable settlement or other agreement with plaintiff.

**Subd. 3.** A court shall not enter a dismissal order relative to any certifying defendant even though full compliance with subdivision 1 has been made where the plaintiff can show one of the following:

(a) That the defendant has exercised some significant control over the design or manufacture of the product, or has provided instructions or warnings to the manufacturer relative



to the alleged defect in the product which caused the injury, death or damage;

(b) That the defendant had actual knowledge of the defect in the product which caused the injury, death or damage; or

(c) That the defendant created the defect in the product which caused the injury, death or damage.

**Subd. 4.** Nothing contained in subdivisions 1 to 3 shall be construed to create a cause of action in strict liability in tort or based on other legal theory, or to affect the right of any person to seek and obtain indemnity or contribution.

M.S.A. § 544.41.

If the necessary fact findings cannot be made in a pre-trial hearing, jury instructions may be necessary to aid in the resolution of the factual disputes that will have to be resolved pursuant to subdivision 3. Subdivision 3 is the only subdivision of the statute that should create potential jury questions. Special verdict questions may be framed to incorporate the issues.

## SPECIAL VERDICT FORMS

## CIVSVF 75.90

DESIGN DEFECT AND INADEQUATE WARNING  
THEORIES (SINGLE PLAINTIFF AND SINGLE  
DEFENDANT)

1. Was (defendant manufacturer)'s product in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (property exposed to) the product because of (defendant manufacturer)'s design?

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Was that design a direct cause of the (plaintiff)'s (injuries) (damages)?

---

Yes or No

3. Was the product in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (those exposed to) (property exposed to) the product because (defendant manufacturer) failed to provide adequate (warning) (instructions) for the safe use of the product?

---

Yes or No

4. *If your answer to Question 3 was "Yes," then answer this question:* Were the inadequate (warnings) (instructions) a direct cause of (plaintiff)'s (injuries) (damages)?

---

Yes or No

5. Was (plaintiff) negligent with respect to (his) (her) own safety?

---

Yes or No

6. *If your answer to Question 5 was "Yes," then answer this question:* Was (plaintiff)'s negligence a direct cause of (his) (her) own (injuries) (damage)?

---

Yes or No

[If you answered "Yes" to Question 6, and you also answered "Yes" to Question 2 and/or 4, then answer Question 7.]

7. Taking all of the fault that directly caused the plaintiff's (injuries) (damage) as 100%, what percentage of fault do you attribute to:

(defendant manufacturer)

If you answered "Yes" to Question 2 and/or 4 \_\_\_\_\_%

(plaintiff)

If you answered "Yes" to Question 6 \_\_\_\_\_%

TOTAL 100%

---

### USE NOTE

This special verdict form assumes a single plaintiff and a single defendant. The form should be used in cases where the plaintiff asserts design defect and inadequate warning theories.

To avoid confusion and the possibility of an inconsistent jury verdict, the special verdict form uses only single liability questions for design defect and failure to warn, in accordance with the supreme court's recommendation in *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 94 n. 2 (Minn. 1987).

The special verdict questions and their supporting jury instructions are as follows:

1. CIVJIG 75.20: Design Defect.
2. CIVJIG 75.50: Causation.
3. CIVJIG 75.25: Warnings and Instructions.
4. CIVJIG 75.50: Causation.
5. CIVJIG 25.10: Negligence.
6. CIVJIG 27.10: Direct Cause.
7. CIVJIG 28.15: Comparative Fault.

### AUTHORITIES

In *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 94, n. 2 (Minn. 1987), the supreme court stated that in a products liability case where the plaintiff asserts both design defect and inadequate warning theories, there should be separate special verdict questions to cover those issues.

According to M.S.A. § 604.01, subd. 1a, “fault” includes negligence and strict liability. The definition of fault, therefore, includes a manufacturer’s liability for a design defect or inadequate warnings or instructions. Where the plaintiff asserts a products liability claim, and there is also a question concerning the plaintiff’s contributory negligence, the standard instruction on negligence in CIVJIG 25.10 would be given, along with the comparative fault instruction in CIVJIG 28.15. The causation instruction is in CIVJIG 27.10.



## CIVSVF 75.92

## MANUFACTURING DEFECT THEORY (SINGLE PLAINTIFF AND SINGLE DEFENDANT)

1. Was (defendant manufacturer)'s product in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (property exposed to) the product because of (defendant manufacturer)'s design?

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Was that design a direct cause of the (plaintiff)'s (injuries) (damages)?

---

Yes or No

3. Was the product in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (those exposed to) (property exposed to) the product because (defendant manufacturer) failed to provide adequate (warnings) (instructions) for the safe use of the product?

---

Yes or No

4. *If your answer to Question 3 was "Yes," then answer this question:* Were the inadequate (warnings) (instructions) a direct cause of (plaintiff)'s (injuries) (damages)?

---

Yes or No

5. Was (plaintiff) negligent with respect to (his) (her) own safety?

---

Yes or No

6. *If your answer to Question 5 was "Yes," then answer this question:* Was (plaintiff)'s negligence a direct cause of (his) (her) own (injuries) (damage)?

---

Yes or No

[If you answered "Yes" to Question 6, and you also answered "Yes" to Question 2 and/or 4, then answer Question 7.]

7. Taking all of the fault that directly caused the plaintiff's (injuries) (damage) as 100%, what percentage of fault do you attribute to:

(defendant manufacturer)

If you answered "Yes" to Question 2 and/or 4 \_\_\_\_\_%

(plaintiff)

If you answered "Yes" to Question 6 \_\_\_\_\_%

TOTAL 100%

---

### USE NOTE

This special verdict form assumes a single plaintiff and a single defendant who is a product manufacturer. The form should be used only in cases where the plaintiff's theory of defect is a manufacturing flaw. In such a case, the plaintiff has a right to have two theories submitted to the jury, if the evidence supports both theories.

The special verdict questions and their supporting jury instructions are as follows:

1. CIVJIG 75.30: Manufacturing Defects.
2. CIVJIG 75.50: Causation.
3. CIVJIG 75.35: Liability of Manufacturer or Seller of Goods—Negligence.
4. CIVJIG 75.50: Causation.
5. CIVJIG 25.10: Negligence.
6. CIVJIG 27.10: Direct Cause.
7. CIVJIG 28.15: Comparative Fault.

### AUTHORITIES

In *Bilotta v. Kelley Co.*, 346 N.W.2d 616, 621–622 (Minn. 1984), the supreme court held that strict liability principles apply to cases involving manufacturing defects. In those cases, the plaintiff is entitled to assert both strict liability and negligence theories of recovery. Any possibility of an inconsistent verdict can be avoided by submitting the manufacturing defect issue first, and then permitting the jury to answer the negligence questions only after finding that the product in question is defective. The issue of whether there is a defective condition is common to both theories. *Worden v. Gangelhoff*, 308 Minn. 252, 254, 241 N.W.2d 650, 651 (Minn. 1976).

## CIVSVF 75.94

**LIABILITY ASSERTED AGAINST MANUFACTURER  
AND OTHER SELLER BASED ON DESIGN DEFECT  
(SINGLE PLAINTIFF, MULTIPLE DEFENDANTS)**

1. Was (defendant manufacturer)'s product in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (property exposed to) the product because of (defendant manufacturer)'s design?

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Was the defective design a direct cause of the (plaintiff)'s (injury) (damages)?

---

Yes or No

3. Did (defendant intermediary) (sell) (lease) the product in question?

---

Yes or No

4. Was (defendant intermediary) negligent in (assembling) (packaging) (testing) the product?

---

Yes or No

5. *If your answer to Question 4 was "Yes," then answer this question:* Was (defendant intermediary)'s negligence a direct cause of the plaintiff's (injury) (damages)?

---

Yes or No

6. Was (plaintiff) negligent with respect to (his) (her) own safety?

---

Yes or No

7. If your answer to Question 5 was "Yes," then answer this question: Was (plaintiff's negligence a direct cause of (his) (her) own (injuries) (damage)?

---

Yes or No

[If you answered "Yes" to two or more of Questions 2, 5, or 7, then answer Question 8.]

8. Taking all of the fault that directly caused the plaintiff's (injuries) (damage) as 100%, what percentage of fault do you attribute to:

(defendant manufacturer)

If you answered "Yes" to Question 2 and/or 4 \_\_\_\_\_%

(defendant intermediary)

If you answered "Yes" to Question 4 \_\_\_\_\_%

(plaintiff)

If you answered "Yes" to Question 6 \_\_\_\_\_%

TOTAL 100%

---

### USE NOTE

This special verdict form should be used when the plaintiff's claim against the product manufacturer is based on design defect and the claim against another intermediary in the chain is based on negligence. If the only theory asserted against the other product seller is a strict liability claim, that party may avoid liability under M.S.A. § 544.41, which entitles the seller to dismissal of strict liability claims against them if the manufacturer is solvent and subject to jurisdiction in Minnesota. In order to keep the nonmanufacturing product seller as a defendant, the plaintiff must prove one of the statutory exceptions in M.S.A. § 544.41, subd. 3, that justify keeping the seller in the lawsuit, whether under a strict liability or negligence theory.

There may be fact questions concerning the application of M.S.A. § 544.41 in such cases. If so, the jury should be instructed on the relevant factors, and those factors should be submitted to the jury by an appropriate special verdict question. Those factors are as follows:

- (a) That the defendant has exercised some significant control over the design or manufacture of the product, or has



provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the injury, death or damage;

- (b) That the defendant had actual knowledge of the defect in the product which caused the injury, death or damage; or
- (c) That the defendant created the defect in the product which caused the injury, death or damage

M.S.A. § 544.41, subd. 3.

If there is a jury issue as to whether one or more of the factors specified in subdivision 3 are met, the following special verdict questions could be used:

[Did (defendant intermediary) exercise some significant control over the design or manufacture of the product that caused the (injury) (death) (damage)?]

[Did (defendant intermediary) provide instructions or warnings to the manufacturer relative to the alleged defect in the product that caused the (injury) (death) (damage)?]

[Did (Defendant Seller other than Manufacturer) have actual knowledge of the defect in the product that caused the (injury) (death) (damage)?]

[Did (defendant intermediary create the defect in the product that caused the (injury) (death) (damage)?]

At a minimum, in order to impose liability on the nonmanufacturing defendant, the plaintiff must prove that the defendant sold the product in question. Also, a finding that one of the relevant factors under section 544.41 is met does not, by itself, establish liability, however, even if those findings point in that direction. A finding that the defendant exercised significant control over the design of the product may make the defendant seller a product manufacturer, subject to liability for a defective design. If the defendant seller provided warnings, it might be held liable for failing to provide adequate warnings on the product. Actual knowledge of the defect may make the defendant seller negligent. Creation of the defect in the product may make the defendant seller solely liable. Other instructions and special verdict questions will have to be used to establish the seller's liability.

The special verdict questions and their supporting jury instructions are as follows:

1. CIVJIG 75.20: Design Defect.

2. CIVJIG 75.30: Causation.
3. CIVJIG 75.35: Liability of Manufacturer or Seller of Goods—Negligence.
4. CIVJIG 75.35: Liability of Manufacturer or Seller of Goods—Negligence.
5. CIVJIG 75.30: Causation.
6. CIVJIG 25.10: Negligence.
7. CIVJIG 27.10: Direct Cause.
8. CIVJIG 28.15: Comparative Fault.

## CIVSVF 75.95

**LIABILITY ASSERTED ONLY AGAINST  
INTERMEDIARY—MANUFACTURER NOT IN SUIT  
(SINGLE PLAINTIFF AND SINGLE INTERMEDIARY  
OTHER THAN MANUFACTURER)**

1. Was the product manufactured by (manufacturer) in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (property exposed to) the product because of its design?

---

Yes or No
2. *If your answer to Question 1 was "Yes," then answer this question:* Was the defective condition a direct cause of the (plaintiff)'s (injuries) (damages)?

---

Yes or No
3. Was the product in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (property exposed to) the product because (manufacturer) failed to provide adequate (warning) (instructions) for the safe use of the product?

---

Yes or No
4. *If your answer to Question 3 was "Yes," then answer this question:* Were the inadequate (warnings) (instructions) a direct cause of the (injuries) (damages) sustained by the (plaintiff)?

---

Yes or No
5. Did (intermediary) (sell) (lease) the product in question?

---

Yes or No
6. Was (plaintiff) negligent with respect to (his) (her) own safety?

---

Yes or No

7. *If your answer to Question 6 was "Yes," then answer this question: Was (plaintiff's negligence a direct cause of (his) (her) own (injuries) (damage)?*

\_\_\_\_\_  
Yes or No

[If you answered "Yes" to Question 2 or 4, and you also answered "Yes" to Question 5 and Question 7, then answer Question 8.]

8. Taking all of the fault that directly caused the plaintiff's (injuries) (damage) as 100%, what percentage of fault do you attribute to:

(defendant manufacturer)

If you answered "Yes" to Question 2 and/or 4 \_\_\_\_\_%

(defendant intermediary)

If you answered "Yes" to Question 2 and/or 4 \_\_\_\_\_%

(plaintiff)

If you answered "Yes" to Question 6 \_\_\_\_\_%

TOTAL 100%

### USE NOTE

This special verdict form assumes a single plaintiff and a defendant who is a nonmanufacturing seller. It also assumes that the manufacturer is not in the suit. In cases against a product seller other than the product manufacturer, the seller is liable for the sale of a defective product, even though its only role was to sell the product. The form assumes that there is no proof of negligence on the part of the other product seller. If the other seller's negligence is in question, additional questions on negligence and causation will have to be added to the form.

The Minnesota Supreme Court requires the fault of all parties who may have contributed to the accident to be compared. Therefore, it is appropriate to submit the manufacturer's fault to the jury, even if the manufacturer is not a party to the litigation. The comparative fault question could be submitted one of two ways. The fault of the product manufacturer and seller could be the subject of separate lines in the comparative fault question, or their combined fault could be the subject of a separate line.

The special verdict questions and their supporting jury instructions are as follows:



1. CIVJIG 75.20: Design Defect.
2. CIVJIG 75.50: Causation.
3. CIVJIG 75.25: Duty to Warn.
4. CIVJIG 75.50: Causation.
5. CIVJIG 75.31: Intermediaries Other than Manufacturers.
6. CIVJIG 25.10: Negligence.
7. CIVJIG 27.10: Direct Cause.
8. CIVJIG 28.15: Comparative Fault.

### AUTHORITIES

If the manufacturer is neither solvent nor subject to jurisdiction in Minnesota, other product sellers may not avoid liability for selling a defective product. M.S.A. § 544.41; *Marcon v. Kmart Corp.*, 573 N.W.2d 728, 730 (Minn. Ct. App. 1998), rev. denied (Minn. April 14, 1998). If the product was defective as sold by the manufacturer, the other product seller is liable if it sold the product in question.

Minnesota products liability law has been applied to a variety of product sellers and distributors engaging in various transactions equivalent to a sale of a product. The supreme court has applied products liability principles to leases of defective products. *Clark v. Rental Equip. Co.*, 300 Minn. 420, 220 N.W.2d 507 (1974) (scaffolding without a safety railing); *Rediske v. Minnesota Valley Breeder's Ass'n*, 374 N.W.2d 745 (Minn. Ct. App. 1985), rev. granted, 377 N.W.2d 459 (Minn. Dec.11, 1985), dismissed May 15, 1986 (defective solid animal waste recycling system); and bailments, *Butler v. Northwestern Hospital*, 202 Minn. 282, 285, 278 N.W. 37, 38 (1938) (hot water burns sustained by plaintiff-patient due to defect in clamp in proctoclysis delivery system).

Submission of the case to the jury, where the product manufacturer is not in the suit, may present difficulties. On the one hand, the manufacturer and other product seller have combined to sell a defective product. If the product manufacturer is not accountable, the remaining product seller is liable. However, the conduct of the product seller may be passive in the sense that the seller did nothing other than sell a defective product that was manufactured by another. If the question of the seller's fault is submitted to the jury, and the jury assesses a large percentage of fault against the manufacturer of the product, even though the manufacturer is not a party in the lawsuit, and there is no percentage of fault against the product seller, a question arises as to whether the product seller should be held liable at all. The answer to that question seems to be clear. Any fault charged to the product

manufacturer becomes the responsibility of the other product seller. M.S.A. § 604.02, subd. 3; *Marcon v. Kmart Corp.*, 573 N.W.2d 728, 730 (Minn. Ct. App. 1998), rev. denied (Minn. April 14, 1998). Submission of the fault of both the manufacturer and seller is consistent with the supreme court's opinion in *Lines v. Ryan*, 272 N.W.2d 896, 902-903 (Minn. 1978), in which the court said that "a jury must have the opportunity to consider the negligence of all parties to the transaction, whether or not they be parties to the lawsuit and whether or not they can be liable to the plaintiff or to the other tort-feasors either by operation of law or because of a prior release."

The supreme court faced the issue in a products liability case involving a suit against a manufacturer, dealer, and assembler, basing their claims in negligence and strict liability. The jury set the product seller's fault at zero:

[T]he jury found that the seller, Potomac Ford Truck Sales, Inc., sold a defective unit and that the defect was a cause of Mr. Hudson's injury, yet, in apportioning fault, the jury put Potomac's fault at zero. I do not think these answers are inconsistent. As the majority opinion points out, this only means the jury found that Potomac sold a defective truck but that Potomac "was not responsible for the defect." I do not understand the majority to mean by this that Potomac is not liable to plaintiffs in strict liability, only that Potomac's liability "stems solely from its passive role as the retailer of a defective product furnished to it by the manufacturer." *Farr v. Armstrong Rubber Co.*, 288 Minn. 83, 97, 179 N.W.2d 64, 73 (1970). In other words, Potomac is liable to plaintiffs but only in a vicarious or derivative sense as the inert seller in the marketing chain. This is not the kind of conduct that needs to be included in a comparative fault question, and the jury properly ignored it. Potomac should be found liable to plaintiffs but entitled to indemnity from the other defendants, as was done in *Farr*, supra, and *Jack Frost, Inc. v. Engineered Building Components Co., Inc.*, 304 N.W.2d 346 (Minn. 1981). *Tolbert v. Gerber Industries, Inc.*, 255 N.W.2d 362 (Minn. 1977) does not preclude indemnity in this situation.

*Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 158-59 (Minn. 1982) (Simonett, J., concurring). The suggestion is that the fault of the seller lower in the chain should not be submitted to the jury in the first place.

That leaves the trial court with three alternatives in cases where there is no negligence on the part of parties lower in the chain of distribution. In those cases, liability (and fault) hinges on the fact of the sale of the product. One alternative is to submit the combined fault of the manufacturer and seller as a single unit to the jury. A second alternative is to simply submit the fault of the product manufacturer to the jury. That is the procedure suggested by Justice Simonett in his

concurring opinion in *Hudson*. The third alternative is to submit the fault of the manufacturer and seller as separate units and then combine the percentages of fault assigned to each. If the jury assigns 0% of the fault to the product seller, the seller nonetheless is responsible for the percentage of fault assigned to the non-party product manufacturer. That was the procedure followed in *Marcon*.

If the plaintiff's fault is in issue, it should be compared to the combined fault of the product manufacturer and product seller. Cf. *Cambern v. Sioux Tools, Inc.*, 323 N.W.2d 795, 798 (Minn. 1982) (court refused to aggregate the fault of a product manufacturer and the plaintiff's employer).

The findings of fault may not preclude a later determination that indemnity, rather than contribution, is the appropriate remedy among the defendants *inter se*. See, e.g., *Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 159 (Minn. 1982) (Simonett, J., concurring); *Polaris Indus. v. Plastics, Inc.*, 299 N.W.2d 414 (Minn. 1980); *Frey v. Montgomery Ward & Co.*, 258 N.W.2d 782 (Minn. 1977); *Tolbert v. Gerber Industries, Inc.*, 255 N.W.2d 362 (Minn. 1977).



## CIVSVF 75.96

**DESIGN DEFECT ASSERTED AGAINST  
MANUFACTURER AND COMPONENT PARTS  
MANUFACTURER (SINGLE PLAINTIFF, PRODUCT  
MANUFACTURER, AND COMPONENT PARTS  
MANUFACTURER)**

1. Did (product manufacturer)'s design result in a product that was in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (property exposed to) the product?

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Was the defective condition a direct cause of the (plaintiff's) (injury) (damages)?

---

Yes or No

3. Was (component part manufacturer)'s component part design in a defective condition unreasonably dangerous to (the user) (the user's property)?

---

Yes or No

4. *If your answer to Question 3 was "Yes," then answer this question:* Was the defective condition a direct cause of the (plaintiff's) (injury) (damages)?

---

Yes or No

5. Was (plaintiff) negligent with respect to (his) (her) own safety?

---

Yes or No

6. *If your answer to Question 5 was "Yes," then answer this question:* Was such negligence a direct cause of (his) (her) own (injury) (damage)?

---

Yes or No

[If you answered "Yes" to two or more of Questions 2, 4, or 6, then answer Question 7.]



7. Taking all of the fault that directly caused the plaintiff's (injuries) (damage) as 100%, what percentage of fault do you attribute to:

(defendant manufacturer)

If you answered "Yes" to Question 2 \_\_\_\_\_%

(defendant component parts manufacturer)

If you answered "Yes" to Question 4 \_\_\_\_\_%

(plaintiff)

If you answered "Yes" to Question 6 \_\_\_\_\_%

TOTAL 100%

---

### USE NOTE

This special verdict form assumes a single plaintiff brings suit against both a product manufacturer and the manufacturer of a component part.

The special verdict questions and their supporting jury instructions are as follows:

1. CIVJIG 75.20: Design Defect.
2. CIVJIG 75.50: Causation.
3. CIVJIG 75.20: Design Defect.
4. CIVJIG 75.50: Causation.
5. CIVJIG 25.10: Negligence.
6. CIVJIG 27.10: Direct Cause.
7. CIVJIG 28.15: Comparative Fault.

### AUTHORITIES

Component parts manufacturers are subject to products liability theories. *See, e.g., Tolbert v. Gerber Industries, Inc.*, 255 N.W.2d 362 (Minn. 1977).

While fault may be divided among all parties, the impact of the fault distribution on the plaintiff's right to recover depends on whether the fault, if any, of the defendant manufacturer and component parts manufacturer are aggregated for purposes of comparison to the

plaintiff's fault. Also, for purposes of determining liability for contribution or indemnity, the findings of fault may not preclude a later judicial determination that indemnity is the appropriate remedy for the product manufacturer against the component parts manufacturer. *See, e.g., Polaris Indus. v. Plastics, Inc.*, 299 N.W.2d 414 (Minn. 1980); *Frey v. Montgomery Ward & Co.*, 258 N.W.2d 782 (Minn. 1977); *Tolbert v. Gerber Industries, Inc.*, 255 N.W.2d 362 (Minn. 1977).

## CIVSVF 75.98

**LIABILITY OF PRODUCT MANUFACTURER BASED  
ON DESIGN DEFECT AND INADEQUATE  
WARNINGS AND PLAINTIFF'S EMPLOYER (SINGLE  
PLAINTIFF, SINGLE MANUFACTURER, AND  
PLAINTIFF'S EMPLOYER)**

1. Did (defendant)'s design result in a product that was in a defective condition unreasonably dangerous to (buyers of) (users of) (those exposed to) (property exposed to) the product?

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Was the defective design a direct cause of the (injuries) (damages) sustained by (plaintiff)?

---

Yes or No

3. Was the product in a defective condition unreasonably dangerous to (the user) (the user's property) because (defendant) failed to provide adequate (warnings) (instructions) for the safe use of the product?

---

Yes or No

4. *If your answer to Question 3 was "Yes," then answer this question:* Was the defective condition a direct cause of the (injuries) (damages) sustained by (plaintiff)?

---

Yes or No

5. Was (employer) negligent with respect to (plaintiff's) safety?

---

Yes or No

6. *If your answer to Question 5 was "Yes," then answer this question:* Was (employer)'s negligence a direct cause of (plaintiff's) injury?

---

Yes or No

7. Was (plaintiff) negligent with respect to (his) (her) own safety?

---

Yes or No

8. *If your answer to Question 7 was "Yes," then answer this question: Was (plaintiff's) negligence a direct cause of (his) (her) own (injuries) (damage)?*

\_\_\_\_\_  
Yes or No

[If you answered "Yes" to Question 2 or 4, or both, and "Yes" to Question 6 and/or Question 8, then answer Question 9.]

9. Taking all of the fault that directly caused the plaintiff's (injuries) (damage) as 100%, what percentage of fault do you attribute to:

(defendant manufacturer)

If you answered "Yes" to Questions 2 and/or 4 \_\_\_\_\_%

(employer)

If you answered "Yes" to Question 6 \_\_\_\_\_%

(plaintiff)

If you answered "Yes" to Question 8 \_\_\_\_\_%

TOTAL 100%

### USE NOTE

This special verdict form should be used when the plaintiff asserts a design defect claim against a product manufacturer, and the product manufacturer asserts a third-party claim against plaintiff's employer. The fault of all parties is subject to comparison.

The special verdict questions and their supporting jury instructions are as follows:

1. CIVJIG 75.20: Design Defect.
2. CIVJIG 75.50: Causation.
3. CIVJIG 75.25: Duty to Warn.
4. CIVJIG 75.50: Causation.
5. CIVJIG 25.10: Negligence.
6. CIVJIG 27.10: Direct Cause.
7. CIVJIG 25.10: Negligence.



8. CIVJIG 27.10: Direct Cause.
9. CIVJIG 28.15: Comparative Fault.

### AUTHORITIES

The employer is not directly liable to the plaintiff, but is potentially liable on a contribution claim to the defendant manufacturer. *Lambertson v. Cincinnati Corp.*, 312 Minn. 114, 257 N.W.2d 679 (1977).

In cases involving the fault of both the manufacturer and plaintiff's employer, the plaintiff's fault is compared to the manufacturer's. If the plaintiff's percentage of fault is greater than the fault of the manufacturer, the manufacturer is not liable. The employer's fault is not aggregated with the manufacturer's fault for purposes of comparison to the plaintiff's percentage of fault. *Camburn v. Sioux Tools, Inc.*, 323 N.W.2d 795, 798 (Minn. 1982) (refusing to aggregate manufacturer's and employer's fault).



# CATEGORY 80

## PROFESSIONAL MALPRACTICE

---

### *Table of Instructions*

#### MEDICAL PROFESSIONALS AND HOSPITALS

- CIVJIG 80.10 Duty of a Doctor, Dentist, or Healthcare Provider
- CIVJIG 80.11 Loss of a Chance of (Survival) (More Favorable Outcome)
- CIVJIG 80.16 Departure from Manufacturer's Instructions
- CIVJIG 80.19 Duty of Doctor to Refer
- CIVJIG 80.22 Consent to Treatment-Operation
- CIVJIG 80.25 Informed Consent (Negligent Nondisclosure)
- CIVJIG 80.28 Patient's Duty to Follow Instructions
- CIVJIG 80.31 Duty of Nurse
- CIVJIG 80.37 Duty of Hospital
- CIVJIG 80.40 Liability of Hospital Following Doctor's Orders
- CIVJIG 80.43 Liability of Hospital for Negligence of Physician or Nurse
- CIVJIG 80.46 Liability of Hospital for Damage or Injury to Third Person by Patient

#### ATTORNEYS

- CIVJIG 80.55 Duty of an Attorney
- CIVJIG 80.58 Duty of an Attorney-Specialist
- CIVJIG 80.61 Attorney-Client Relationship—Contract
- CIVJIG 80.64 Attorney-Client Relationship—No Express or Implied Contract
- CIVJIG 80.66 Legal Malpractice—Causation

#### OTHER PROFESSIONALS

- CIVJIG 80.75 Duty of Public Accountant, Architect, Engineer, and Other Professional

#### SPECIAL VERDICT FORMS

- CIVSVF 80.90 Medical Malpractice
- CIVSVF 80.92 Medical Malpractice—Informed Consent

CIVSVF 80.93	Loss of a Chance of a More Favorable Outcome
CIVSVF 80.94	Loss of a Chance of a More Favorable Outcome as an Alternative Theory
CIVSVF 80.95	Wrongful Death—Loss of a Chance
CIVSVF 80.96	Wrongful Death—Loss of a Chance as an Alternative Theory
CIVSVF 80.97	Legal Malpractice—Case-In-A-Case
CIVSVF 80.98	Legal Malpractice—Transactional

---

### INTRODUCTORY NOTE

To establish a claim for negligent care and treatment in a medical malpractice action, a plaintiff must typically introduce expert testimony demonstrating:

1. the standard of care in the medical community applicable to the particular defendant's conduct;
2. that the defendant departed from the standard of care; and
3. that the departure from the standard of care directly caused the plaintiff's injury.

*Bigay v. Garvey*, 575 N.W.2d 107, 111, n. 4, (Minn. 1998), quoting *Plutshack v. University of Minn. Hosps.*, 316 N.W.2d 1, 5 (Minn. 1982).

A plaintiff in a medical malpractice action must typically introduce expert testimony that demonstrates:

- (1) the standard of care in the medical community applicable to the particular defendant's conduct; (2) that the defendant departed from the standard of care; and (3) that the departure from the standard of care directly caused the plaintiff's injury.

*Becker v. Mayo Found.*, 737 N.W.2d 200, 216 (Minn. 2007). In *Becker*, the supreme court held that although physicians are mandatory reporters under the Child Abuse Reporting Act, M.S.A. § 626.556, subd. 3(a)(1), there is no express or implied civil cause of action under the statute for failure to report. The court did hold that failure to report could constitute a breach of the standard of care applicable to physicians, however. 737 N.W.2d at 216–17.

**Expert Affidavits.** Minnesota law requires that in an action “alleging malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider which includes a cause of action as to which expert testimony is necessary,” the plaintiff must serve with the summons and complaint an affidavit of expert review. M.S.A. § 145.682, subds. 2 and 3. Pursuant to an amendment in 2014,



within 180 days after commencement of discovery under Minn.R.Civ.P. 26.04(a), the plaintiff must serve an affidavit identifying those experts whom plaintiff expects to call to testify at trial. M.S.A. § 145.682, subds. 2 and 4. While the statute permits extension of these time limits, the statutory penalty for noncompliance is “mandatory dismissal with prejudice.” M.S.A. § 145.682, subd. 6.

In *Teffeteller v. University of Minnesota*, 645 N.W.2d 420 (Minn. 2002), the supreme court again emphasized that M.S.A. § 145.682 requires an affidavit to provide more than “a sneak preview” of the expert’s testimony. In *Teffeteller*, plaintiff proffered an affidavit from a physician board certified in pediatrics and pediatric critical care, who had served as the medical director of the pediatric intensive care unit at the University of Wisconsin Children’s Hospital. The district court, on motion of the defendants, dismissed the case with prejudice, in part, because the plaintiff’s expert lacked practical and clinical experience in treating bone marrow transplant patients. Applying the “very deferential standard” used to review determinations of expert qualifications, the supreme court held that the district court did not abuse its discretion in finding that a doctor who is not specialized in the field of pediatric oncology, or experienced with bone marrow transplants, is not competent to testify as to the claim of malpractice in this case. 645 N.W.2d at 427. The affidavit requirement set forth in M.S.A. § 145.682 “simply cannot be met by a witness not reasonably expected to provide an admissible expert opinion at trial.” *Id.*

**Statute of Limitations.** In Minnesota, a cause of action for medical malpractice generally accrues when treatment for the particular condition is terminated. In *Broek v. Park Nicollet Health Services*, 660 N.W.2d 439 (Minn. Ct. App. 2003), a wrongful death medical malpractice action, the decedent suffered cardiac arrest while playing racquetball in September 2000. Defendant had treated the decedent beginning in 1992 until February 1993. The court of appeals concluded that the record established that the critical element of injury was missing until September 2000, the date of the heart attack. The court also noted that the record contained no medical evidence that the decedent’s heart condition changed or progressed during the seven-year time period following his consultation with the defendant. The court held that in the narrow circumstances presented in the case, when an injury does not occur until after treatment ceases, the cause of action accrues at the time of injury. The court emphasized that its analysis reflected “an objective standard—ascertainable evidence of injury—rather than a subjective standard—the plaintiff’s personal knowledge of such an injury.” 660 N.W.2d at 444.

In *Molloy v. Meier*, 679 N.W.2d 711 (Minn. 2004), a medical malpractice suit brought by parents who alleged negligence by four physicians in failing to diagnose a genetic disorder, Fragile X syndrome, in the mother’s daughter from a previous marriage, and that their negligence resulted in their conceiving another child who had the same disorder, one of the issues was when the statute of limitations in M.S.A.

§ 541.076 (b) (2002), began to run on the claim. The question was whether the cause of action accrued as of the date of the last treatment of the first child, or at the time of the conception of the second child. The court reaffirmed “the long-standing principle that malpractice actions based on failures to diagnose generally accrue at the time of the misdiagnosis, because some damage generally occurs at that time,” 679 N.W.2d at 722, but concluded that “where the claim is that if the diagnosis of Fragile X had been properly made a tubal ligation would have been performed and conception avoided, . . . that damage does not occur until the point of conception, and the cause of action then accrues.” 679 N.W.2d at 722, citing *Sherlock v. Stillwater Clinic*, 260 N.W.2d 169, 175 (Minn. 1977) (wrongful conception action accrues at point of conception).

In 1999, the legislature amended M.S.A. § 541.076 (2000), deleting the two-year statute of limitations for medical malpractice and replacing it with a four-year limitations period, effective August 1, 1999. In *Gomon v. Northland Family Physicians, Ltd.*, 645 N.W.2d 413, 419–20 (Minn. 2002), the supreme court held that the new four-year limitations period applies retroactively to revive a medical malpractice claim that was time-barred before August 1, 1999.

In *MacRae v. Group Health Plan, Inc., et al.*, 753 N.W.2d 711 (Minn. 2008), the Minnesota Supreme Court considered the question of when a cause of action for negligent misdiagnosis accrues. Margaret MacRae brought a medical malpractice action after her husband died of cancer. MacRae alleged that her husband “would have, more likely than not, survived his illness” absent the defendant’s negligent diagnosis. The defendants moved for summary judgment, arguing that the complained-of 2001 misdiagnosis was a discrete act of negligence and, as such, MacRae’s claim was barred by the four-year statute of limitations. MacRae contended that her cause of action was not time-barred because it did not accrue until her husband’s cancer reached the point where he would not survive. *MacRae*, 753 N.W.2d at 715. The district court granted summary judgment and the court of appeals affirmed. The Minnesota Supreme Court reversed, emphasizing that “the limitations inquiry in cancer misdiagnosis cases should be conducted based on the unique record developed in each particular case,” and rejecting a blanket rule that a cause of action accrues as a matter of law at the time of misdiagnosis. *MacRae*, 753 N.W.2d at 720. “[A]s in other medical malpractice cases, we conclude that a court must determine when a cause of action accrues in cases of misdiagnosis of cancer by looking at the unique circumstances of the particular case to determine when some compensable damage occurred as a result of the alleged negligent misdiagnosis.” *MacRae*, 753 N.W.2d at 721. The court further stated that “a patient suffers compensable damage from a negligent misdiagnosis of cancer when it becomes more likely than not that he will not survive the disease,” but cautioned that this was not the only “possible compensable damage in such cases,” since the progression of the disease might require the patient to undergo a different course of treatment or incur additional medical expenses. *MacRae*, 753 N.W.2d at 722. The court held that the defendants in *MacRae* had



failed to meet their burden to establish that MacRae's husband suffered compensable damage more than four years prior to the commencement of the action. *MacRae*, 753 N.W.2d at 723.

**Standards of Care.** In *Ouellette v. Subak*, 391 N.W.2d 810 (Minn. 1986), the Minnesota Supreme Court abandoned the honest error in judgment rule, and adopted the language articulating a physician's standard of care that serves as a basis for CIVJIG 80.10. The court stated:

A doctor is not negligent simply because his or her efforts prove unsuccessful. The fact a doctor may have chosen a method of treatment that later proves to be unsuccessful is not negligence if the treatment chosen was an accepted treatment on the basis of the information available to the doctor at the time a choice had to be made; a doctor must, however, use reasonable care to obtain the information to exercise his or her professional judgment, and an unsuccessful method of treatment chosen because of a failure to use such reasonable care would be negligence.

391 N.W.2d at 816.

**Departures from the Standard of Care.** In most medical malpractice actions, the plaintiff will be required to introduce expert testimony to prove the departure from the standard of care. CIVJIG 80.10 sets forth the appropriate language to use in most cases. This section of the Guide also includes instructions for certain specific types of alleged malpractice. CIVJIG 80.16 is appropriate for cases involving a physician's departure from a drug manufacturer's instructions. CIVJIG 80.19 may be used in cases alleging that a physician failed to make an appropriate referral; CIVJIG 80.22 in cases alleging that a physician failed to obtain consent to treatment; and CIVJIG 80.25, in cases alleging that a physician failed to obtain informed consent from a patient. The duty to refer, consent to treatment, and informed consent are discussed briefly below, and in greater detail following each instruction.

Minnesota does not recognize a medical malpractice cause of action for "negligent aggravation of a preexisting condition." *Leubner v. Sterner*, 493 N.W.2d 119, 120 (Minn. 1992). Aggravation of a preexisting physical condition may be, however, a measure of damages. *Leubner*, 493 N.W.2d at 122.

Minnesota recognizes the existence of a cause of action for "wrongful conception." In *Sherlock v. Stillwater Clinic*, 260 N.W.2d 169 (Minn. 1977), the court held that "[w]here the purpose of the physician's actions is to prevent conception or birth, elementary justice requires that he be held legally responsible for the consequences which have in fact occurred." *Sherlock*, 260 N.W.2d at 174. *See also*, M.S.A. § 145.424 subd. 3 (1994).

In *Molloy v. Meier*, 679 N.W.2d 711 (Minn. 2004), a medical mal-

practice suit brought by parents who alleged negligence by four physicians in failing to diagnose a genetic disorder, Fragile X syndrome, in the mother's daughter from a previous marriage, and that their negligence resulted in their conceiving another child who had the same disorder, the supreme court held that M.S.A. § 145.424 did not bar the claim because it was properly characterized as a wrongful conception claim, rather than a wrongful birth or wrongful life claim.

**Duty to refer.** In *Larsen v. Yelle*, 310 Minn. 521, 246 N.W.2d 841 (1976), the Minnesota Supreme Court established standards for the obligation of a physician to refer a patient to a specialist, or to advise the patient of the need for other or different treatment. The court stated that:

[O]ne of the requirements which the law exacts of general practitioners of medicine is that if, in the exercise of the care and skill demanded by those requirements, such a practitioner discovers, or should know or discover, that the patient's ailment is beyond his knowledge or technical skill, or ability or capacity to treat with a likelihood of reasonable success, he is under a duty to disclose the situation to his patient, or to advise him of the necessity of other or different treatment \* \* \*. If under such circumstances the general practitioner fails to inform the patient and undertakes to treat when he should refer to a specialist, he will be held to that standard of care required of the specialist. That is, in order to escape liability for injury caused by his treatment he himself administers to the patient, he must at a minimum comply with that degree of skill, care, knowledge and attention ordinarily possessed and exercised by specialists in good standing under like circumstances.

310 Minn. at 525, 246 N.W.2d at 845.

**Negligent Credentialing.** In *Larson v. Wasemiller*, 738 N.W.2d 300 (Minn. 2007), as part of their medical malpractice claims, plaintiffs alleged that St. Francis Medical Center was negligent in granting surgery privileges to one of the treating physicians. The supreme court recognized the tort of negligent credentialing. The court stated:

Given our previous recognition of a hospital's duty of care to protect its patients from harm by third persons and of the analogous tort of negligent hiring, and given the general acceptance in the common law of the tort of negligent selection of an independent contractor, as recognized by the Restatement of Torts, we conclude that the tort of negligent credentialing is inherent in and the natural extension of well-established common law rights.

*Larson*, 738 N.W.2d at 306.

**Loss of a Chance.** The Minnesota Supreme Court adopted loss of a chance theory in *Dickhoff ex rel. Dickhoff v. Green*, 836 N.W.2d 321 (Minn. 2012). The supreme court rejected the relaxed causation rationale for the theory, but agreed "with those courts that treat the reduc-



tion of a patient's chance of recovery or survival as a distinct injury. It should be beyond dispute that a patient regards a chance to survive or achieve a more favorable outcome as something of value." *Id.* at 334. Following the Massachusetts Supreme Judicial Court's decision in *Matsuyama v. Birnbaum*, 890 N.E.2d 819, 832 (Mass. 2008), the Minnesota Supreme Court concluded "that a physician harms a patient by negligently depriving her of a chance of recovery or survival and should be liable for the value of that lost chance." 836 N.W.2d at 334.

The court also stated that "a patient retains the burden of proving by the traditional preponderance of the evidence standard that the physician's negligence substantially reduced the patient's chance of recovery or survival." *Id.* at 337.

**Consent to treatment.** A physician or surgeon cannot treat or perform an operation without first obtaining the consent of the patient or someone authorized to consent for the patient. *Bang v. Charles T. Miller Hosp.*, 251 Minn. 427, 434, 88 N.W.2d 186, 190 (1958); *Mohr v. Williams*, 95 Minn. 261, 268–269 104 N.W. 12, 14–15 (1905). Consent may be implied where the patient is unconscious and in need of immediate attention. *Mohr v. Williams*, 95 Minn. 261, 104 N.W. 12 (1905); D. Dobbs et al., *The Law of Torts* 2D, § 115 (2011); see also M.S.A. § 604A.01. Consent may also be implied where the surgeon during the course of an operation to which consent has been given discovers an unanticipated condition which must be removed in order to preserve the life or health of the patient. See *Mohr*, 95 Minn. at 269, 104 N.W. at 15. Whether consent should be implied from the circumstances of the case is a jury question.

**Informed consent.** Medical malpractice claims based on the failure to obtain a patient's informed consent are based on negligence principles. See *Kinikin v. Heupel*, 305 N.W.2d 589, 593 (Minn. 1981); *Cornfeldt v. Tongen*, 262 N.W.2d 684, 689 (Minn. 1977), modified, 295 N.W.2d 638 (1980). To establish a claim of negligent nondisclosure, a plaintiff must show five elements:

1. a duty on the part of a physician to know of a risk or alternative treatment plan;
2. a duty to disclose the risk or alternative program;
3. a breach of that duty;
4. causation, i.e., the undisclosed risk must materialize in harm; and,
5. damages.

*Bigay v. Garvey*, 575 N.W.2d 107, n. 3 (Minn. 1998), citing *Plutshack v. University of Minn. Hosps.*, 316 N.W.2d 1, 9 (Minn. 1982). The law

relating to this particular cause of action is discussed in greater depth following CIVJIG 80.25.

**Physician's Duty to Non-Patients.** The fact that a doctor renders services gratuitously does not absolve the doctor from the duty to meet the foregoing standard. See *Skillings v. Allen*, 143 Minn. 323, 325, 173 N.W. 663, 663-64 (1919).

A doctor owes a far more limited duty to non-patients. Generally, there can be no claim for medical malpractice where there is no physician-patient relationship. *Henkemeyer v. Boxall*, 465 N.W.2d 437, 439 (Minn. Ct. App. 1991). A doctor conducting an adverse medical examination has a duty only to conduct the examination so as to not cause harm to the patient. In *Henkemeyer*, the court held that absence of a physician-patient relationship barred any claim for failure to diagnose an abdominal aneurysm. 465 N.W.2d at 439. A bystander who fainted during treatment of her brother could not bring an action for failure to warn against the doctor, because there was no physician-patient relationship between the bystander and the doctor. *McElwain v. Van Beek*, 447 N.W.2d 442, 445 (Minn. Ct. App. 1989).

Pursuant to M.S.A. § 148.975, subd. 2, a medical practitioner is not civilly liable for a failure to warn of or take reasonable precautions against a patient's violent behavior unless that patient has "communicated to the practitioner a specific, serious threat of physical violence against a specific, clearly identified or identifiable potential victim." See also *McElwain*, 447 N.W.2d at 445; *Cairl v. State*, 323 N.W.2d 20, 25-26 (Minn. 1982). A doctor has a duty to control a patient only where the doctor has the ability to control and the harm is foreseeable. *McElwain*, 447 N.W.2d at 445; see also *Lundgren v. Fultz*, 354 N.W.2d 25 (Minn. 1984). For instructions concerning the liability of hospitals in failure to warn cases, see CIVJIG 80.40 (hospital's liability when following a doctor's orders) and CIVJIG 80.46 (hospital's liability for damage or injury to a third person by a patient).

In *Strom v. C.C.*, 1997 WL 118253 (Minn. Ct. App. 1997), the plaintiffs urged the adoption of a negligence cause of action recognizing a therapist's duty to third parties when repressed memories are recalled. The court declined to recognize such a duty, stating:

In Minnesota a duty to a third party has rarely been recognized in a malpractice action. See *Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan*, 494 N.W.2d 261 (Minn. 1992) (recognizing legal malpractice liability to third parties in limited circumstances when sole purpose of attorney-client relationship is to benefit third party directly); *Lundgren v. Fultz*, 354 N.W.2d 25, 27 (Minn. 1984) (recognizing physician's duty to control patient when patient presents danger to third party); *Cairl v. State*, 323 N.W.2d 20, 25-26 (Minn. 1982) (recognizing physician's duty to warn when patient makes specific threat against identifiable third party); *Skillings v. Allen*, 143 Minn. 323, 325-26, 173 N.W. 663, 664 (1919) (recogniz-



ing physician's contractual duty to child's parents when child suffered from infectious disease that spread to parents).

This court has declined to extend the law to recognize a duty to third-party nonpatients when there is no contractual relationship, duty to warn, or duty to control. See *McElwain v. Van Beek*, 447 N.W.2d 442, 445–46 (Minn. Ct. App. 1989) (declining to recognize physician's duty to third party), rev. den. (Minn. Dec. 20, 1989). In addition, not recognizing a duty to third-party non-patients is consistent with established public policy because imposing a duty on therapists to protect the interests of falsely accused individuals would adversely affect the interests of sexual abuse survivors in effective and uninterrupted therapy.

1997 WL 118253 at 4.

In *Molloy v. Meier*, 679 N.W.2d 711 (Minn. 2004), a medical malpractice suit brought by parents who alleged negligence by four physicians in failing to diagnose a genetic disorder in the mother's daughter from a previous marriage, and that their negligence resulted in their conceiving another child who had the same disorder, one of the issues was whether "a physician who allegedly fails to test for and diagnose a genetic disorder in an existing child leading to the birth of a subsequent child with that disorder owe[s] a legal duty to the child's parents."

The court noted that the first question was one of first impression in Minnesota. The court held that the physicians did owe a duty to the parents:

[A] physician's duty regarding genetic testing and diagnosis extends beyond the patient to biological parents who foreseeably may be harmed by a breach of that duty. In this case, the patient suffered from a serious disorder that had a high probability of being genetically transmitted and for which a reliable and accepted test was widely available. The [physicians] should have foreseen that parents of childbearing years might conceive another child in the absence of knowledge of the genetic disorder. The [physicians] owed a duty of care regarding genetic testing and diagnosis, and the resulting medical advice, not only to [the child] but also to her parents . . . [T]he duty arises where it is reasonably foreseeable that the parents would be injured if the advice is negligently given. "[T]he risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension.'"

679 N.W.2d at 719 (citing *Connolly v. Nicollet Hotel*, 254 Minn. 373, 381, 95 N.W.2d 657, 664 (1959), quoting *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 162 N.E. 99, 100 (1928)).

In response to concerns that the duty could be extended to an un-

reasonable extent, including to distant relatives, the court made it clear that it did not address whether the duty would extend “beyond biological parents who foreseeably will rely on genetic testing and diagnosis and therefore foreseeably be injured by negligence in discharging the duty of care.” 679 N.W.2d at 720.

**Causation.** One of the elements of a *prima facie* case of medical malpractice is proof that the defendant’s departure from the relevant standard of care was a direct cause of the patient’s injuries. *See, e.g., Fabio v. Bellomo*, 504 N.W.2d 758, 762 (Minn. 1993). Minnesota courts have articulated this causation standard in different ways. In *Luebner v. Sterner*, 493 N.W.2d 119, 121 (Minn. 1992), the supreme court stated, “In order to establish a *prima facie* case of medical malpractice in this state, a plaintiff must prove, among other things, that it is more probable than not that his or her injury was a result of the defendant health care provider’s negligence.” In other cases, the court has used somewhat different formulations. For example, in *Walton v. Jones*, 286 N.W.2d 710, 715 (Minn. 1979), the court stated, “Testimony must show that it was more likely that death occurred from defendant’s negligence than from anything else.” That same court cited with approval language from *Walstad v. University of Minnesota Hospitals*, 442 F.2d 634 (8th Cir. 1971), in which the court summed up Minnesota law as follows:

The plaintiffs of course also have the burden of proof on the issue of the fact of causation and must introduce evidence which affords a reasonable basis for one to conclude that it is more likely than not that defendant’s conduct was a substantial factor in bringing about the result. “In negligence cases and especially in malpractice cases, proof of causal connection must be something more than consistent with the plaintiff’s theory of how the claimed injury was caused.”

\* \* \* Proof of causation cannot rest on conjecture and the mere possibility of such causation is not enough to sustain the plaintiffs’ burden of proof. \* \* \* Furthermore, when the causal relation issue is not one within the common knowledge of laymen, causation in fact cannot be determined without expert testimony.

442 F.2d at 639 (citations omitted), quoted in *Walton*, 286 N.W.2d at 715. In *Smith v. Knowles*, 281 N.W.2d 653, 656 (Minn. 1979), the court explained that “testimony must establish it was more probable that death resulted from some negligence for which defendant was responsible than from something for which he was not responsible” (quoting *Silver v. Redleaf*, 292 Minn. 463, 465, 194 N.W.2d 271, 273 (1972)). The Committee recommends that CIVJIG 27.10, Direct Cause, be used in instructing the jury on the issue of causation.

#### Other Professional Malpractice-Expert Review

There is also an expert review requirement in professional liability cases involving attorneys, architects, certified public accountants, engineers, and surveyors, and landscape architects, which is located in M.S.A. § 544.42. The statute, as amended in 2014, reads as follows:



**Subdivision 1. Definitions.** For purposes of this section:

(1) “professional” means a licensed attorney or an architect, certified public accountant, engineer, land surveyor, or landscape architect licensed or certified under chapter 326 or 326A; and

(2) “action” includes an original claim, cross-claim, counterclaim, or third-party claim. An action does not include a claim for damages requiring notice pursuant to section 604.04.

**Subd. 2. Requirement.** In an action against a professional alleging negligence or malpractice in rendering a professional service where expert testimony is to be used by a party to establish a prima facie case, the party must:

(1) unless otherwise provided in subdivision 3, paragraph (a), clause (2) or (3), serve upon the opponent with the pleadings an affidavit as provided in subdivision 3; and

(2) serve upon the opponent within 180 days of commencement of discovery under the Rules of Civil Procedure, rule 26.04(a) an affidavit as provided in subdivision 4.

**Subd. 3. Affidavit of expert review.** (a) The affidavit required by subdivision 2, clause (1), must be drafted by the party’s attorney and state that:

(1) the facts of the case have been reviewed by the party’s attorney with an expert whose qualifications provide a reasonable expectation that the expert’s opinions could be admissible at trial and that, in the opinion of this expert, the defendant deviated from the applicable standard of care and by that action caused injury to the plaintiff;

(2) the expert review required by clause (1) could not reasonably be obtained before the action was commenced because of the applicable statute of limitations; or

(3) the parties have agreed to a waiver of the expert review required by clause (1) or the party has applied for a waiver or modification by the court under paragraph (c).

(b) If an affidavit is executed under paragraph (a), clause (2), the affidavit in paragraph (a), clause (1), must be served on the defendant or the defendant’s counsel within 90 days after service of the summons and complaint.

(c) The certification of expert review required under this section

may be waived or modified if the court where the matter will be venued determines, upon an application served with commencement of the action, that good cause exists for not requiring the certification. Good cause includes, but is not limited to, a showing that the action requires discovery to provide a reasonable basis for the expert's opinion or the unavailability, after a good faith effort, of a qualified expert at reasonable cost. If the court waives or modifies the expert review requirements, the court shall establish a scheduling order for compliance or discovery. If the court denies a request for a waiver under this subdivision, the plaintiff must serve on the defendant the affidavit required under subdivision 2, clause (1), within 60 days, and the affidavit required under subdivision 2, clause (2), within 180 days.

**Subd. 4. Identification of experts to be called.** (a) The affidavit required by subdivision 2, clause (2), must be signed by the party's attorney and state the identity of each person whom the attorney expects to call as an expert witness at trial to testify with respect to the issues of negligence, malpractice, or causation, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. Answers to interrogatories that state the information required by this subdivision satisfy the requirements of this subdivision if they are signed by the party's attorney and served upon the opponent within 180 days after commencement of discovery under the Rules of Civil Procedure, rule 26.04(a).

(b) The parties by agreement, or the court for good cause shown, may provide for extensions of the time limits specified in subdivision 2, 3, or this subdivision. Nothing in this subdivision prevents any party from calling additional expert witnesses or substituting other expert witnesses.

**Subd. 5. Responsibilities of party as attorney.** If a party is acting pro se, the party shall sign the affidavit or answers to interrogatories referred to in this section and is bound by those provisions as if represented by an attorney.

**Subd. 6. Penalty for noncompliance.** (a) Failure to comply with subdivision 2, clause (1), within 60 days after demand for the affidavit results, upon motion, in mandatory dismissal of each cause of action with prejudice as to which expert testimony is necessary to establish a prima facie case.

(b) Failure to comply with subdivision 3, paragraph (b) or (c), results, upon motion, in mandatory dismissal of each cause of action with prejudice as to which expert testimony is necessary to establish a prima facie case.

(c) Failure to comply with subdivision 4 results, upon motion, in

mandatory dismissal of each action with prejudice as to which expert testimony is necessary to establish a prima facie case, provided that an initial motion to dismiss an action under this paragraph based upon claimed deficiencies of the affidavit or answers to interrogatories shall not be granted unless, after notice by the court, the nonmoving party is given 60 days to satisfy the disclosure requirements in subdivision 4. In providing its notice, the court shall issue specific findings as to the deficiencies of the affidavit or answers to interrogatories.

**Subd. 7. Consequences of signing affidavit.** The signature of the party or the party's attorney constitutes a certification that the person has read the affidavit or answers to interrogatories, and that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry, it is true, accurate, and made in good faith. A certification made in violation of this subdivision subjects the attorney or party responsible for that conduct to reasonable attorney's fees, costs, disbursements, and other damages that may be determined by the court.

M.S.A. § 544.42.

### Legal Malpractice

A lawyer's duty to a client flows from the wellsprings of both tort and contract law. Either, or both, can be used to analyze the attorney-client relationship. Under the contract model, "there must be an express or implied agreement to hire the lawyer." *In re Perry*, 494 N.W.2d 290, 295 (Minn. 1992). Under the tort model, "an attorney-client relationship is created whenever an individual seeks and receives legal advice from an attorney in circumstances in which a reasonable person would rely on such advice." 494 N.W.2d at 294-95.

Typically, in a legal malpractice action, the plaintiff's prima facie case consists of four elements:

1. the existence of an attorney-client relationship;
2. acts constituting negligence or breach of contract;
3. that such acts were the proximate cause of the plaintiff's damages;
4. that but for defendant's conduct the plaintiff would have been successful in the prosecution or defense of the action.

*Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980). The Minnesota Supreme Court reaffirmed the basic elements of legal malpractice in *Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan*, 494 N.W.2d 261 (Minn. 1992), *Rouse v. Dunkley & Bennett*, 520 N.W.2d 406 (Minn. 1994) and *Jerry's Enterprises, Inc. v. Larkin*,



*Hoffman, Daly, & Lindgren*, 711 N.W.2d 811, 816 (Minn. 2006). If the malpractice claim is based upon a breach of duty that does not involve the prosecution or defense of litigation, reference to the defense or prosecution of an action is inappropriate, but a plaintiff must still show that the attorney's alleged negligence was the cause-in-fact of the plaintiff's damages. In *Jerry's Enterprises*, the plaintiff alleged that the attorney had failed to identify a possible cloud on the title when reviewing closing documents. The court held that "in an action for legal malpractice arising out of representation in transactional matters, the fourth element of the cause of action is modified to require a plaintiff to show that, but for defendant's conduct, the plaintiff would have obtained a more favorable result in the underlying transaction than the result obtained." *Jerry's Enterprises*, 711 N.W.2d at 819. See, e.g., *Hill v. Okay Constr. Co.*, 312 Minn. 324, 338, 252 N.W.2d 107, 117 (Minn. 1977).

**Statute of Limitations.** The statute of limitations for a legal malpractice action is six years. *Herrmann v. McMenemy & Severson*, 590 N.W.2d 641, 643 (Minn. 1999) (citing M.S.A. § 541.05, subd. 1(5)). A cause of action accrues when all of its elements exist to the extent that the claim could withstand a motion to dismiss for failure to state a claim upon which relief can be granted. *Bonhiver v. Graff*, 311 Minn. 111, 116–117, 248 N.W.2d 291, 296 (1976). A cause of action for legal malpractice that is based on a claim that counsel's acts were the proximate cause of the plaintiff's criminal conviction accrues, and the statute of limitations begins to run, when the plaintiff obtains relief from the conviction. *Noske v. Friedberg*, 670 N.W.2d 740, 744–45 (Minn. 2003). In *Antone v. Mirviss*, 720 N.W.2d 331 (Minn. 2006), the court considered what event would trigger the legal malpractice statute of limitations when the allegation was that the attorney improperly prepared an antenuptial agreement. The court held that a cause of action for legal malpractice accrues and the statute of limitations begins to run "on the occurrence of any compensable damage, whether specifically identified in the complaint or not." *Antone*, 720 N.W.2d at 336. The court reasoned that Antone was left without the legal protections he sought as of the date of his marriage, and held that that exposure was an injury that resulted in damage sufficient to trigger the running of the statute of limitations. *Antone*, 720 N.W.2d 337–38.

See also *Ames & Fischer Co., II, LLP v. McDonald*, 798 N.W.2d 557, 564 (Minn. Ct. App. 2011), rev. denied (Minn. July 19, 2011) (a cause of action for the alleged negligent failure to make or advise to make an I.R.C. § 754 election accrues, and the statute of limitations begins to run, when the income-tax return is filed without the election, not at the expiration of the automatic extension period).

**The Attorney-Client Relationship.** While an express or implied agreement is necessary to create contract-based duties of an attorney-client relationship, no such agreement is necessary to create tort-based duties. In *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980), the supreme court defined the differences between contract and tort theories:



Under a negligence approach it must essentially be shown that defendant rendered legal advice (not necessarily at someone's request) under circumstance which made it reasonably foreseeable to the attorney that if such advice was rendered negligently, the individual receiving the advice might be injured thereby \* \* \*. Or, stated another way, under a tort theory, "[a]n attorney-client relationship is created whenever an individual seeks and receives legal advice from an attorney in circumstances in which a reasonable person would rely on such advice." \* \* \* A contract analysis requires the rendering of legal advice pursuant to another's request and the reliance factor, in this case, where the advice was not paid for, need be shown in the form of promissory estoppel.

291 N.W.2d at 693 n. 4. See also *Langeland v. Farmers State Bank*, 319 N.W.2d 26, 30 (Minn. 1982) (under the negligence theory "the relationship is created whenever a person seeks and receives legal advice from a lawyer under circumstances in which a reasonable person would rely on the advice"). In *Rucker v. Schmidt*, 794 N.W.2d 114 (Minn. 2011), the supreme court ruled that the attorney-client relationship was not enough, in and of itself, to establish privity for purposes of determining whether the doctrine of res judicata barred a legal malpractice action, following the plaintiff's earlier successful fraud action against the lawyer's client.

The supreme court also reaffirmed the test in a negligence action to determine whether an attorney-client relationship has been created. "An attorney-client relationship is created whenever an individual seeks and receives legal advice from an attorney in circumstances in which a reasonable person would rely on such advice." *In re Perry*, 494 N.W.2d 290, 295 (Minn. 1992). An undisclosed principal may not sue its agent's attorney for malpractice, nor may an agent who suffers no damage sue its attorney to recover damages suffered by the undisclosed principal. *CPJ Enterprises, Inc. v. Gernander*, 521 N.W.2d 622, 624 (Minn. Ct. App. 1994).

In 1993, the Minnesota Supreme Court ruled that public defenders were immune from suit for legal malpractice. *Dziubak v. Mott*, 503 N.W.2d 771, 776-78 (Minn. 1993).

**Attorney's Duty to Non-Clients.** In *Francis v. Piper*, 597 N.W.2d 922 (Minn. Ct. App. 1999), rev. denied (Minn. Oct. 26, 1999), the court of appeals held that an attorney did not owe a duty to the sister of a client for whom he drafted several wills. Absent a will, the sister would have been the sole heir of the client. Under the client's last will, his sister was left nothing. The sister challenged the will, ultimately reaching a settlement with the beneficiary of the will. The sister then sued her brother's attorney, claiming that he was negligent because of her brother's incapacity. The court of appeals held that the sister had no claim because she was not in an attorney-client relationship with the attorney. The court noted that under limited circumstances, an attorney may be held liable to a non-client third-party if the sole purpose of the

client retaining the attorney is to directly benefit the third party: "The requirement that the third party be an intended beneficiary is a threshold requirement for an attorney to have a duty to a third party." 597 N.W.2d at 924.

In *McIntosh County Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538 (Minn. 2008), McIntosh County Bank (the Bank) purchased participation interests in a loan sold to them by Miller & Schroeder (M & S). M & S hired Dorsey to do legal work in connection with the sale of the loan. When the loan was not paid, the Bank filed a legal malpractice action against Dorsey, alleging that it was a third-party beneficiary of the attorney/client relationship between Dorsey and M & S. Holding that the Bank was neither a client nor third-party beneficiary, the district court granted summary judgment in favor of Dorsey. The supreme court held that for a third-party beneficiary to establish a claim for legal malpractice, that party must be "a direct and intended beneficiary of the attorney's services." *McIntosh*, 745 N.W.2d at 547. The court stated that a party is a "direct beneficiary of a transaction if the transaction has as a central purpose an effect on the third party and the effect is intended as a purpose of the transaction." *Id.* For a third-party beneficiary to be an intended beneficiary of a transaction, "the attorney must be aware of the client's intent to benefit the third party." *McIntosh*, 745 N.W.2d at 548. In *McIntosh*, the Bank was neither an intended nor direct beneficiary. As such, it was unnecessary for the court to determine issues such as the foreseeability of harm to the plaintiff or the degree of certainty that plaintiff suffered harm (the *Lucas* factors), because those issues are relevant to a determination of the extent of the duty owed to a direct and intended beneficiary. See *Marker v. Greenberg*, 313 N.W.2d 4, 5 (Minn. 1981), citing *Lucas v. Hamm*, 56 Cal.2d 583, 15 Cal.Rptr. 821, 364 P.2d 685, 687 (1961). Additionally, the court ruled that there was no implied agreement between Dorsey and the Bank. "The simple fact that the [Bank] would benefit from Dorsey's services does not impose contractual liability." *McIntosh*, 745 N.W.2d at 548.

**Acts Constituting Negligence or Breach of Contract.** An attorney, acting with express or implied authority, is required to act in good faith and with reasonable care and to do what he honestly supposes, and is justified in supposing, to be in the best interest of the client. Traditionally, Minnesota courts have adhered to the rule that mere error of judgment on an attorney's part does not create liability if it is "within the bounds of an honest exercise of professional judgment." See, e.g., *Cook v. Connolly*, 366 N.W.2d 287, 292 (Minn. 1985); *Glenna v. Sullivan*, 310 Minn. 162, 169, 245 N.W.2d 869, 872-73 (1976); and, *Meagher v. Kavli*, 256 Minn. 54, 60-61, 97 N.W.2d 370, 375 (1959). However, in *Ouellette v. Subak*, 391 N.W.2d 810 (Minn. 1986), the supreme court qualified the "honest error in judgment" language, stressing that a professional must use reasonable care to obtain the information needed to exercise his or her professional judgment, and failure to use such reasonable care would be negligence, even if done in good faith. Though *Ouellette* is a medical malpractice case, subsequent deci-



sions indicate that the court's conclusions on "honest error" are equally applicable to legal malpractice cases. *Wartnick v. Barnett*, 490 N.W.2d 108, 113 (Minn. 1992); see also *Dziubak v. Mott*, 503 N.W.2d 771, 776 (Minn. 1993).

Expert testimony generally is required to establish a standard of care applicable to an attorney whose conduct is alleged to have been negligent. Expert testimony is also typically necessary to establish whether the attorney's conduct deviated from that standard. *Admiral Merchants Motor Freight v. O'Connor & Hannan*, 494 N.W.2d 261, 266 (Minn. 1992), citing *Hill v. Okay Construction Co.*, 312 Minn. 324, 252 N.W.2d 107, 116 (1977). The issue of whether an appeal would have been successful is a question of law for the court. See *Hyduke v. Grant*, 351 N.W.2d 675, 677 (Minn. Ct. App. 1984).

**Proximate and "But For" Causation.** The third element of a legal malpractice action is a showing that the negligent acts (or acts in breach of contractual duties) were the proximate cause of the plaintiff's damages. The definition of "proximate cause" in a legal malpractice action is substantially similar to the definition in any other type of action. See, e.g., *Wartnick v. Barnett*, 490 N.W.2d 108, 113 (Minn. 1992) (applying traditional causation analysis in holding that the legislature's amendments to the law were a superseding cause of plaintiff's damages.) Since the question of proximate cause often turns on the issue of foreseeability, proximate cause is normally a question of fact for the jury. 490 N.W.2d at 115.

The fourth element of a legal malpractice action also relates to the issue of causation. Part of a plaintiff's prima facie case is proof that the plaintiff would have been successful in the underlying action but for the malpractice. In malpractice actions involving damages allegedly resulting from malpractice in litigation or other dispute resolutions, this fourth element requires the finder of fact to reach a decision about the underlying action, the "case-within-the-case." See, e.g., *Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 454 (Minn. Ct. App. 1998) (holding that summary judgment dismissing plaintiff's claims was appropriate because the plaintiff could not show, even had the lawyer perfected the requested appeal, that the appeal would have been successful).

In legal malpractice actions arising from transactional work or other legal work not involving dispute resolution, there may be no underlying action or "case-within-a-case," but the plaintiff must still demonstrate that the alleged negligence was the cause-in-fact of the claimed damages. So, for example, in *Jerry's Enterprises*, the plaintiff alleged that the attorney had failed to identify a possible cloud on the title when reviewing closing documents. The court held that "in an action for legal malpractice arising out of representation in transactional matters, the fourth element of the cause of action is modified to require

a plaintiff to show that, but for defendant's conduct, the plaintiff would have obtained a more favorable result in the underlying transaction than the result obtained." *Jerry's Enterprises*, 711 N.W.2d at 819. In *Blue Water Corp. v. O'Toole*, 336 N.W.2d 279 (Minn. 1983), the plaintiffs alleged that the attorney they retained to help them get a bank charter had been negligent in failing to file the application on their behalf. The court ruled that the plaintiffs not only needed to prove the attorney was negligent, but must then establish "that, had the application been timely filed, the Commission would have granted them the bank charter." 336 N.W.2d at 282. Similarly, in *First Bank of Minnesota v. Olson*, 557 N.W.2d 621, 624-25 (Minn. Ct. App. 1997), the issue was whether two plaintiff banks' settlement of litigation entitled them to recover against an attorney who allegedly gave the bank inappropriate advice. The court said that under the proper "test of causation, a jury could determine whether the banks' settlement damages were the natural and proximate result of [their attorney's] conduct, even if the banks' legal position in the . . . litigation was strong."

**Damages.** In *Herrmann v. McMenomy & Severson*, 590 N.W.2d 641, 643 (Minn. 1999), the supreme court held that accrual of a cause of action for legal malpractice begins when the cause of action will survive a motion to dismiss for failure to state a claim upon which relief can be granted. The plaintiff in that case argued that the statute of limitations does not begin to run until the manifestation of harm or loss. The court rejected this standard.

Damages for emotional distress are not recoverable in a legal malpractice action absent proof of willful, wanton, or malicious conduct. *Lickteig v. Alderson, Ondov, Leonard & Sween*, 556 N.W.2d 557, 562 (Minn. 1996):

We . . . hold that, as in other negligence actions, emotional distress damages are available in limited circumstances. There must be a direct violation of the plaintiff's rights by willful, wanton or malicious conduct; mere negligence is not sufficient.

As is the case in other professional malpractice actions, the amount of loss sustained by the client in a legal malpractice action is a question of fact for the jury to decide. *Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan*, 494 N.W.2d 261, 267 (Minn. 1992). In Minnesota malpractice cases, attorney fees incurred in the underlying dispute constituting the alleged malpractice may be recovered. *Admiral Merchants*, 494 N.W.2d at 267, citing *Hill v. Okay Construction Co.*, 312 Minn. 324, 252 N.W.2d 107, 116 (1977).

### Other Professional Malpractice

As is the case with claims of medical or legal malpractice, a plaintiff claiming that any other type of professional committed malpractice must typically prove, first, the existence of the standard of care in that professional community; second, that the professional departed from



this standard of care; and, third, that this departure directly resulted in the plaintiff's damages. So, for example, to recover in an accountant malpractice case the plaintiff has to establish the basic elements of a negligence case: duty, breach of duty, proximate cause, and damages. See *Olson, Clough & Straumann CPA's v. Trayne Properties, Inc.*, 392 N.W.2d 2, 4 (Minn. Ct. App. 1986); *Vernon J. Rockler & Co. v. Glickman, Isenberg, Lurie & Co.*, 273 N.W.2d 647, 650 (Minn. 1978) (accountant malpractice case). In *Fremont 66, Inc. v. Maryland Casualty Co.*, 1992 WL 54934 (Minn. Ct. App. 1992), approved the use of similar language in a case involving the duty of an insurance agent to procure coverage. See also *Campbell v. Valley State Agency*, 407 N.W.2d 109, 111 (Minn. Ct. App. 1987).

In *Strom v. C.C.*, 1997 WL 118253 (Minn. Ct. App. 1997), the plaintiffs urged the adoption of a negligence cause of action recognizing a therapist's duty to third parties when repressed memories are recalled. The court declined to recognize such a duty, stating:

In Minnesota a duty to a third party has rarely been recognized in a malpractice action. See *Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan*, 494 N.W.2d 261 (Minn. 1992) (recognizing legal malpractice liability to third parties in limited circumstances when sole purpose of attorney-client relationship is to benefit third party directly); *Lundgren v. Fultz*, 354 N.W.2d 25, 27 (Minn. 1984) (recognizing physician's duty to control patient when patient presents danger to third party); *Cairl v. State*, 323 N.W.2d 20, 25-26 (Minn. 1982) (recognizing physician's duty to warn when patient makes specific threat against identifiable third party); *Skillings v. Allen*, 143 Minn. 323, 325-26, 173 N.W. 663, 664 (1919) (recognizing physician's contractual duty to child's parents when child suffered from infectious disease that spread to parents).

This court has declined to extend the law to recognize a duty to third-party nonpatients when there is no contractual relationship, duty to warn, or duty to control. See *McElwain v. Van Beek*, 447 N.W.2d 442, 445, 446 (Minn. Ct. App. 1989) (declining to recognize physician's duty to third party), review denied (Minn. Dec. 20, 1989). In addition, not recognizing a duty to third-party nonpatients is consistent with established public policy because imposing a duty on therapists to protect the interests of falsely accused individuals would adversely affect the interests of sexual abuse survivors in effective and uninterrupted therapy.

1997 WL 118253, at 4 (Minn. Ct. App. 1997).

In Minnesota, unlicensed mental health practitioners are subject to statutory regulation. In *Odenthal v. Minnesota Conference of Seventh Day Adventists*, 649 N.W.2d 426 (Minn. 2002), the supreme court found that M.S.A. § 148B.68 (1998) sets forth neutral principles of conduct for unlicensed mental health practitioners that may be used to establish a claim of negligence. In that case, the plaintiff brought a claim against a

member of the clergy for, among other things, negligent marital counseling. The court in *Odenthal* held that the defendant clergymember met the statutory definition of an unlicensed mental health practitioner and that the standards of conduct for those providing mental health services applied “to all who meet the definition of unlicensed mental health practitioner, regardless of whether the relationship is one of clergy and church member.” 649 N.W.2d at 440. The court held that a negligence suit against a clergymember does not pose a problem of governmental entanglement in religion:

[W]hen the dispute can be resolved according to “neutral principles of law”—that is, by rules or standards that have been developed and are applied without particular regard to religious institutions or doctrines.

*Odenthal*, 649 N.W.2d at 435, citing *Jones v. Wolf*, 443 U.S. 595, 602–04, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). In contrast to reliance on the state statutes regulating unlicensed mental health practitioners, the *Odenthal* court held that use of the minister’s handbook to provide standards for assessment of the negligence claim posed “a serious risk of religious entanglement for a court attempting to discern its limits.” 649 N.W.2d at 436.

In *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209 (Minn. 2007), a lawsuit against an accounting firm alleging several theories, including accountant malpractice, the supreme court considered whether the plaintiff’s answers to interrogatories satisfied the affidavit of expert disclosure requirement imposed by M.S.A. § 544.42, subds. 2(2) and 4. The court held that the answers were insufficient. The version of the statute under consideration in *Brown* required the expert disclosure affidavit to be served within 180 of the commencement of the lawsuit, and in 2014, the legislature amended the statute to require service of the disclosure affidavit within 180 days of commencement of discovery. The provisions setting forth the substantive requirements for the disclosure affidavit remain unchanged, however, and the court construed those provisions of the statute in detail:

Reading the statute as a whole suggests that the affidavit of expert disclosure requires greater information than an affidavit of expert review. The affidavit of expert review is supposed to be served with the complaint and requires the attorney to certify that the attorney has consulted with an expert with adequate qualifications and that the expert has reached the opinion that the defendant deviated from the applicable standard of care in a way that caused the plaintiff’s injuries. Section 544.42, subdivision 3(a)(1). An affidavit of expert disclosure, which is not required until 180 days after commencement of the action, must, by comparison and by definition, provide more information than an affidavit of expert review. Section 544.42, subdivisions 3(a)(1), 4(a).

Further, if we look to the purpose for section 544.42, to provide a



mechanism for the early dismissal of frivolous actions, the minimum standards for such an affidavit should be that it contains meaningful information on each of the issues for which expert testimony will be required at trial to avoid a directed verdict. Although we have not specifically determined what level of expert testimony a plaintiff must provide in order to survive a motion for a directed verdict in an accountant malpractice case, we have done so in the medical and legal malpractice context. We have said that a plaintiff must demonstrate "(1) the standard of care recognized by the medical community \* \* \* , (2) that the defendant in fact departed from that standard, and (3) that the defendant's departure from that standard was a direct cause of [the plaintiff's] injuries" to establish a prima facie case and create a jury question in a medical malpractice case. *Plutshack v. Univ. of Minn. Hosps.*, 316 N.W.2d 1, 5 (Minn.1982); cf. *Admiral Merchs. Motor Freight v. O'Connor & Hannan*, 494 N.W.2d 261, 266 (Minn.1992) (stating that expert testimony is generally required to establish the standard of care applicable to legal malpractice, whether the attorney deviated from that standard, and whether that deviation caused the plaintiff's injury). Thus, in order to survive a motion for directed verdict in an accountant malpractice case, a plaintiff must present expert testimony that identifies the applicable standard of care and opines that the accountant deviated from that standard and that the departure caused the plaintiff's damages.

Thus, if the intent of section 544.42 is to avoid the waste of time and money spent on defending against frivolous actions that will ultimately be the subject of a directed verdict, the minimum standards for an affidavit of expert disclosure, sufficient to satisfy the 180-day requirement, must be that the affidavit provide some meaningful information, beyond conclusory statements, that (1) identifies each person the attorney expects to call as an expert; (2) describes the expert's opinion on the applicable standard of care, as recognized by the professional community; (3) explains the expert's opinion that the defendant departed from that standard; and (4) summarizes the expert's opinion that the defendant's departure was a direct cause of the plaintiff's injuries.

In reaching this conclusion, we are guided in part by our consideration of the "borderline cases" in the medical malpractice context under section 145.682. Prior to the amendment of that section to add a cure provision, we struggled with the issue of whether dismissal was justified when an affidavit was timely provided but it failed to fully or technically comply with the statutory requirements. See, e.g., [*Sorenson v. St. Paul Ramsey Med. Center*, 457 N.W.2d 188, 193 (Minn. 1990)]. In *Sorenson*, we first announced that "[i]n borderline cases where counsel for a plaintiff identifies the experts who will testify and give[s] some meaningful disclosure of what the testimony will be, there may be less drastic alternatives to a procedural dismissal." *Id.*; see also *Anderson v. Rengachary*, 608 N.W.2d 843, 848-49 (Minn.2000) (recognizing the *Srenson* "borderline" exception but holding that the case "hardly exemplifie[d] a

borderline case because the affidavit has serious deficiencies and does not provide any meaningful disclosure regarding how the standard of care was violated or what that standard required”).

732 N.W.2d at 218–19.

The plaintiff in *Wesely v. Flor*, 806 N.W.2d 36 (Minn. 2011), brought a claim for dental malpractice and submitted her original expert affidavit *pro se*. During the 45-day safe-harbor period, although after the expiration of the initial 180-day deadline, counsel for plaintiff submitted a second affidavit identifying a dentist as an expert and disclosing his opinions. The court held that the safe-harbor provision set out in M.S.A. § 145.682, subd. 6(c), permitted plaintiff’s counsel to submit an affidavit identifying a new expert in order to cure the deficiencies of the initial affidavit. The court also held that the statute allows either the plaintiff or his or her attorney to be the affiant. Here, Wesely submitted the original affidavit *pro se*. The second affidavit was submitted and signed by Wesely’s attorney, who had taken over the case. Wesely’s attorney was acting on Wesely’s behalf and was able to amend her affidavit. *Wesely*, 806 N.W.2d at 44.



**MEDICAL PROFESSIONALS AND HOSPITALS****CIVJIG 80.10****DUTY OF A DOCTOR, DENTIST, OR HEALTHCARE PROVIDER****Introduction**

The matter before the Court is a medical negligence action. It is sometimes referred to as medical malpractice.

- A. [(Plaintiff) has alleged that (defendant) was negligent in providing (professional health care) to (plaintiff) and that the (defendant's) negligence was a direct cause of (injury, harm or death) to (plaintiff).]

**OR**

- B. [(Plaintiff) has alleged that (defendant) was negligent in providing (professional health care) to (him/her/decendent) and that (defendant's) negligence was a direct cause of (his/her/decendent's) (loss of a chance of)(his/her) (survival) (better outcome).]

**Definition of "negligence" by a (professional healthcare provider)**

Negligence is the failure to use reasonable care under the circumstances.

Reasonable care by a (doctor, dentist, advanced practice nurse, specialist or other healthcare provider) is care that meets an accepted standard of care a (doctor, dentist, advanced practice nurse, specialist or other healthcare provider), [who is in a similar practice in a similar community] would use or follow under similar circumstances. A failure to provide care that meets an accepted standard of care under the circumstances would be negligence.

**[Failure of treatment]**

[A (doctor, dentist, specialist, advanced practice nurse or

other healthcare provider) is not negligent (simply) (solely) because (his/her) efforts are unsuccessful.

A failure of treatment is not negligence if the treatment was an accepted treatment based on the information the (doctor, dentist, specialist, advanced practice nurse or other healthcare provider) had or reasonably should have had, when the choice was made.

A (doctor, dentist, specialist, advanced practice nurse or other healthcare provider) must use reasonable care to get the information needed to exercise his or her professional judgment. An unsuccessful treatment chosen because a (doctor, dentist, specialist, advanced practice nurse or other healthcare provider) did not use this reasonable care would be negligence.]

#### **[Error in diagnosis]**

[A (doctor, dentist, specialist, advanced practice nurse or other healthcare provider) is not negligent (simply) (solely) because (his/her) efforts are unsuccessful.

An error in diagnosis is not negligence if the diagnosis was an accepted diagnosis based on the information the (doctor, dentist, specialist, advanced practice nurse or other healthcare provider) had or reasonably should have had, when the diagnosis was made.

A (doctor, dentist, specialist, advanced practice nurse or other healthcare provider) must use reasonable care to get the information needed to exercise his or her professional judgment. An error in diagnosis made because a (doctor, dentist, specialist, advanced practice nurse or other healthcare provider) did not use this reasonable care would be negligence.]

---

#### **USE NOTE**

This instruction is meant to provide a single model instruction for use in any professional malpractice action brought against a healthcare

provider. Judges should feel free to substitute the title of the particular kind of medical professional, such as medical doctor, physician's assistant, osteopathic physician, or chiropractor, or title of the particular kind of specialist, such as a surgeon or a neurologist. The reference to a "similar community" should not be given if the doctor is a specialist who is sued for the negligent performance of his specialty. See *Christy v. Saliterman*, 288 Minn. 144, 165–66, 179 N.W.2d 288, 302 (1970). This instruction replaces former CIVJIG 80.10, Duty of a Doctor, Dentist; CIVJIG 80.13, Duty of Doctor, Dentist—Specialist; and CIVJIG 80.34, Duty of Nurse—Specialist. While this instruction may be appropriate in some actions against advanced practice nurses, in cases involving registered nurses or other types of nurses, CIVJIG 80.31, Duty of Nurse may be appropriate.

This instruction uses "doctor" in a generic sense. Judges should feel free to substitute the title of the particular kind of doctor, such as medical doctor, osteopathic physician, or chiropractor, or title of the particular kind of specialist, such as a surgeon or a neurologist. The reference to "similar communities" should not be given if the doctor is a specialist who is sued for the negligent performance of his specialty. See *Christy v. Saliterman*. "Locality" should encompass something more than the same village or city. See *Christy v. Saliterman*, 288 Minn. 144, 165–66, 179 N.W.2d 288, 302 (1970); Restatement (Second) of Torts § 299A cmt. g (1965).

The "Introduction" section of the instruction consists of two alternatives. Part A is intended for use in medical negligence cases that do not involve loss of a chance theory. Part B is intended for use in cases involving a loss of a chance claim.

**Caveat:** The Committee does not take a position on whether loss of a chance theory applies in wrongful death claims. The explanation of loss of a chance theory in the "Introduction" section of the instruction does include wrongful death, however, should a court determine that loss of a chance theory applies in wrongful death cases. The Committee also takes no position on the issue of whether loss of a chance may be asserted as an alternative theory to a medical negligence claim. If a court determines that loss of chance may be asserted as an alternative theory, both A and B may be used.

#### AUTHORITIES

The language for this instruction, and the predecessor instruction, was drawn in large part from the supreme court's decision in *Ouellette v. Subak*, 391 N.W.2d 810, 816 (Minn. 1986).

Where a doctor discovers or should know that the ailment of a patient is beyond his knowledge or technical skill or capacity to treat with a likelihood of reasonable success, the doctor is under a duty to re-



fer the patient to a specialist. See *Larsen v. Yelle*, 310 Minn. 521, 525, 246 N.W.2d 841, 845 (1976); *Manion v. Tweedy*, 257 Minn. 59, 65, 100 N.W.2d 124, 128 (1959).

If the doctor is a specialist, or holds himself out as specially qualified to treat some organ or disease, and the patient accepts treatment with that understanding, the doctor is then held to the standard of skill and care of specialists engaged in that field. See W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on The Law of Torts* § 32 (5th ed. 1984); *Restatement (Second) of Torts* § 299A cmt. c (1965). A specialist is presumed to be acquainted with the national standards of the specialist's professional specialty. *Christy v. Saliterman*, 288 Minn. 144, 179 N.W.2d 288 (1970).

If a doctor misrepresents his or her credentials, a patient may have a claim for negligent misrepresentation or nondisclosure. See, e.g., *Paulos v. Johnson*, 597 N.W.2d 316 (Minn. Ct. App. 1999), and CIVJIG 57.20.

In *Molloy v. Meier*, 679 N.W.2d 711 (Minn. 2004), a medical malpractice suit brought by parents who alleged negligence by four physicians in failing to diagnose a genetic disorder in the mother's daughter from a previous marriage, and that their negligence resulted in their conceiving another child who had the same disorder, one of the issues was whether "a physician who allegedly fails to test for and diagnose a genetic disorder in an existing child leading to the birth of a subsequent child with that disorder owe[s] a legal duty to the child's parents."

The court noted that the first question was one of first impression in Minnesota. The court held that the physicians did owe a duty to the parents:

[A] physician's duty regarding genetic testing and diagnosis extends beyond the patient to biological parents who foreseeably may be harmed by a breach of that duty. In this case, the patient suffered from a serious disorder that had a high probability of being genetically transmitted and for which a reliable and accepted test was widely available. The [physicians] should have foreseen that parents of childbearing years might conceive another child in the absence of knowledge of the genetic disorder. The [physicians] owed a duty of care regarding genetic testing and diagnosis, and the resulting medical advice, not only to [the child] but also to her parents . . . [T]he duty arises where it is reasonably foreseeable that the parents would be injured if the advice is negligently given. "'[T]he risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension.'"

679 N.W.2d at 719 (citing *Connolly v. Nicollet Hotel*, 254 Minn. 373, 381, 95 N.W.2d 657, 664 (1959), quoting *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 162 N.E. 99, 100 (1928)).



In response to concerns that the duty could be extended to an unreasonable extent, including to distant relatives, the court made it clear that it did not address whether the duty would extend “beyond biological parents who foreseeably will rely on genetic testing and diagnosis and therefore foreseeably be injured by negligence in discharging the duty of care.” 679 N.W.2d at 720.

The Minnesota Supreme Court adopted loss of a chance theory in *Dickhoff ex rel. Dickhoff v. Green*, 836 N.W.2d 321 (Minn. 2012). The supreme court rejected the relaxed causation rationale for the theory, but agreed “with those courts that treat the reduction of a patient’s chance of recovery or survival as a distinct injury. It should be beyond dispute that a patient regards a chance to survive or achieve a more favorable outcome as something of value.” *Id.* at 334. Following the Massachusetts Supreme Judicial Court’s decision in *Matsuyama v. Birnbaum*, 890 N.E.2d 819, 832 (Mass. 2008), the Minnesota Supreme Court concluded “that a physician harms a patient by negligently depriving her of a chance of recovery or survival and should be liable for the value of that lost chance.” 836 N.W.2d at 334.

The court also stated that “a patient retains the burden of proving by the traditional preponderance of the evidence standard that the physician’s negligence substantially reduced the patient’s chance of recovery or survival.” *Id.* at 337. The court noted that there are two steps in establishing damages for loss of a chance. The first is to measure the lost chance. “[L]oss of chance damages are measured as ‘the percentage probability by which the defendant’s tortious conduct diminished the likelihood of achieving some more favorable outcome.’” Quoting *Matsuyama v. Birnbaum*, 452 Mass. 1, 890 N.E.2d 819, 839 (2008) (quoting King, Jr., Causation, Valuation, and Chance in Personal Injury Torts Involving Preexisting Conditions and Future Consequences, 90 Yale L.J. 1353, 1382 (1981)). The second step is to value the lost chance. The total recoverable damages will be the percentage chance of survival, multiplied by the total amount of damages that are allowable for the death or injury. *Dickhoff ex rel. Dickhoff v. Green*, 836 N.W.2d 321, 335–36 (Minn. 2013).

### Research References

West’s Key Number Digest  
Health ☞611, 617, 682, 827

## CIVJIG 80.11

## LOSS OF A CHANCE OF (SURVIVAL) (MORE FAVORABLE OUTCOME)

## Loss of a chance

The term “loss of a chance” applies when an already-(ill) (injured) patient suffers (a reduced chance of survival) (a reduced chance of a more favorable outcome) from (his/her) (disease) (injury). If you decide that (Plaintiff) (decedent) had a chance of (surviving) (a more favorable outcome) from (his/her) (disease) (injury) and that (Defendant’s) negligence was a direct cause in decreasing that chance, then you must decide the percentage of that loss of chance.

To determine (Plaintiff’s) (decedent’s) loss of chance, consider the evidence as to what (his/her) chances of a recovery from (his/her) disease would have been if the alleged negligent acts or omissions had not occurred compared to (his/her) chances of a recovery after the alleged negligent acts or negligent acts or omissions as shown by the evidence. In determining any loss of chance, you may consider the medical and statistical evidence the parties have submitted.

---

USE NOTE

This instruction should be given in cases where the claim is that the defendant’s negligence deprived the plaintiff of a loss of a chance of survival or a more favorable outcome. The instruction includes both. Depending on the plaintiff’s theory, the appropriate language, whether loss of a chance of survival or loss of a chance of a better outcome, would be selected.

**Caveat:** the Committee takes no position on whether the loss of a chance theory adopted by the Court in *Dickhoff ex rel. Dickhoff v. Green*, 836 N.W.2d 321 (Minn. 2012), applies in wrongful death cases under M.S.A. § 573.02.

## AUTHORITIES

The Minnesota Supreme Court adopted loss of a chance theory in

*Dickhoff ex rel. Dickhoff v. Green*, 836 N.W.2d 321 (Minn. 2012). The supreme court agreed with those courts that treat the reduction of a patient's chance of recovery or survival as a distinct injury, noting that "[i]t should be beyond dispute that a patient regards a chance to survive or achieve a more favorable medical outcome as something of value," and concluded that a physician harms a patient by negligently depriving her of a chance of recovery or survival and should be liable for the value of that lost chance. *Id.* at 334. The court also stated that "a patient retains the burden of proving by the traditional preponderance of the evidence standard that the physician's negligence substantially reduced the patient's chance of recovery or survival." *Id.* at 337.

The court did not take a position on what constitutes a substantial reduction in the patient's chance of recovery or survival, and the Committee takes no position on that issue.



**CIVJIG 80.16****DEPARTURE FROM MANUFACTURER'S  
INSTRUCTIONS****Standard for negligence in following manufacturer's instructions**

A (doctor) (dentist) is negligent if:

1. The drug manufacturer gave clear and explicit recommendations (and) (or) instructions for use of the drug, and
2. The (doctor) (dentist) did not follow these recommendations (and) (or) instructions.

The (doctor) (dentist) is negligent unless a reasonable (doctor) (dentist) would not have followed these recommendations (and) (or) instructions under the circumstances.

---

**AUTHORITIES**

In *Mulder v. Parke Davis & Co.*, 288 Minn. 332, 181 N.W.2d 882 (1970), the Minnesota Supreme Court stated that:

Where a drug manufacturer recommends to the medical profession (1) the conditions under which its drug should be prescribed; (2) the disorders it is designed to relieve; (3) the precautionary measures which should be observed; and (4) warns of the dangers which are inherent in its use, a doctor's deviation from such recommendations is prima facie evidence of negligence if there is competent medical testimony that his patient's injury or death resulted from the doctor's failure to adhere to the recommendations.

288 Minn. at 339, 181 N.W.2d at 887. Under these circumstances, the doctor must disclose the reasons for departing from the manufacturer's recommended procedures. 288 Minn. at 339, 181 N.W.2d at 887. A plaintiff who presents evidence of deviation from a manufacturer's instructions has established a prima facie case for the element of negligence. At that point, the doctor defendant has the burden of production; that is, the doctor must come forward with an explanation or justification of the deviation. At all times, the plaintiff bears the burden of persuading the jury that the doctor was negligent. The verdict form may ask simply: "Was (defendant) negligent in (his) (her) treatment of (plaintiff)?"



In *Lhotka v. Larson*, 307 Minn. 121, 238 N.W.2d 870 (1976), the court stated that the instructions must be clear and unambiguous. Where the deviations from the instructions clearly took place, then a jury instruction incorporating *Mulder v. Parke Davis* is appropriate. If the manufacturer's instructions are ambiguous, then there is no basis in the manufacturer's instructions for finding that the doctor was negligent in failing to follow the instructions. 307 Minn. at 125-27, 238 N.W.2d at 873-74.

The plaintiff must provide competent medical testimony that his injuries resulted from the defendant's failure to adhere to the manufacturer's recommendations. Causation cannot be established by the package insert in the drug alone. See *Reinhardt v. Colton*, 337 N.W.2d 88, 95 (Minn. 1983).

#### Research References

*West's Key Number Digest*  
Health Ⓒ706, 827

**CIVJIG 80.19****DUTY OF DOCTOR TO REFER****Duty of doctor to refer**

A physician has a duty to refer a patient to a specialist if the physician discovers or should discover that a patient's condition is beyond his or her ability or skill to treat with reasonable success.

If the physician does not refer the patient to a specialist, he or she is held to the same standard of care that a specialist in (name of the field) would use in similar circumstances.

---

**USE NOTE**

Medical malpractice cases alleging breach of the duty to refer may involve two different types of claims. In some cases, a physician is alleged to have conducted a course of treatment that he or she knew or should have known ought to have been conducted by a specialist. This instruction is appropriate to use in cases involving those type of claims. In other cases, a physician may be alleged to have failed to advise a patient that he or she did not specialize in the course of treatment prescribed. This type of claim is more closely akin to a case alleging a breach of the duty to obtain informed consent, and CIVJIG 80.25 may be used.

Proof that a physician failed to refer a patient to a specialist does not, in and of itself, establish negligence. A plaintiff must still prove that his or her injury was directly caused by the failure to refer.

Changes in medical practice have resulted in few, if any, physicians holding themselves out as general practitioners. Instead, doctors engaged in general patient care more typically refer to themselves as engaging in "family practice." This instruction refers to the general duty of a treating physician to refer to a specialist. This is a more accurate statement of the law. Judges should feel free to adapt the instruction to conform to practices and specialties at issue in a particular case. This instruction could, for example, be adapted and used in cases involving a claim that a specialist in one field failed to make an appropriate referral to a specialist in another field.

**AUTHORITIES**

Where a doctor discovers or should know that the ailment of a

patient is beyond his knowledge or technical skill or capacity to treat with a likelihood of reasonable success, the doctor is under a duty to refer the patient to a specialist. In *Larsen v. Yelle*, 310 Minn. 521, 246 N.W.2d 841 (1976), the Minnesota Supreme Court established standards for the obligation of a physician to refer a patient to a specialist, or to advise the patient of the need for other or different treatment. The court stated that:

[O]ne of the requirements which the law exacts of general practitioners of medicine is that if, in the exercise of the care and skill demanded by those requirements, such a practitioner discovers, or should know or discover, that the patient's ailment is beyond his knowledge or technical skill, or ability or capacity to treat with a likelihood of reasonable success, he is under a duty to disclose the situation to his patient, or to advise him of the necessity of other or different treatment. \* \* \* If under such circumstances the general practitioner fails to inform the patient and undertakes to treat when he should refer to a specialist, he will be held to that standard of care required of the specialist. That is, in order to escape liability for injury caused by his treatment he himself administers to the patient, he must at a minimum comply with that degree of skill, care, knowledge and attention ordinarily possessed and exercised by specialists in good standing under like circumstances.

310 Minn. at 525, 246 N.W.2d at 845.

The court ruled that breach of the duty to refer to a specialist does not in itself establish a prima facie case of negligence:

This is so because the treatment which the general practitioner administers may in fact be the exact treatment which a specialist in good standing would have employed had the case been referred to him, and in that circumstance the general practitioner would be no more liable for treatment than would be the specialist had he administered the treatment. It must appear that the breach of the duty to refer to a specialist in fact caused the plaintiff's injury, and this can be shown only if the treatment this plaintiff received was in some way inferior to the treatment he would have received from a specialist. Thus, in order to make out a case of negligence based on a breach of a duty to refer a patient to a specialist for treatment, the plaintiff must also present evidence from which the trier of fact may determine that in the treatment which he in fact administered, the defendant failed to exercise that degree of skill, care, knowledge, and attention ordinarily possessed and exercised by specialists in good standing under like circumstances.

310 Minn. at 525-26, 246 N.W.2d at 845.

#### Research References

*West's Key Number Digest*  
Health ¶641, 827



**CIVJIG 80.22****CONSENT TO TREATMENT-OPERATION****Consent to treatment**

A (doctor) (dentist) must get a patient's consent to (a treatment) (an operation). This consent may be stated or implied.

**When a patient is unable to consent**

When a patient is (a minor) (unconscious) (not in possession of his or her faculties), a (doctor) (dentist) must get the consent from someone authorized to consent for the patient.

**When consent is not needed**

No consent is needed when:

1. There is an emergency that requires (immediate treatment) (an immediate operation), and
2. Consent is impossible or impractical because the delay would endanger the patient's life or health, and
3. The (doctor) (dentist)'s decision (to treat the patient) (to operate on the patient) is what a (doctor) (dentist) in good standing would normally do in similar circumstances.

**Consent during an operation**

No consent is needed during an operation if:

1. The patient consented to the original operation, and
2. The (doctor) (dentist) finds conditions that he or she could not have reasonably anticipated before the operation, and



3. Further or different treatment is needed to protect the patient's life or health, and
4. It is impossible or impractical to ask the patient or an authorized person for consent, and
5. The (doctor) (dentist)'s decision to perform the additional or different (treatment) (operation) is what (doctors) (dentists) in good standing would normally do in similar circumstances.

---

### AUTHORITIES

A physician or surgeon cannot treat or perform an operation without first obtaining the consent of the patient or someone authorized to consent for the patient. *Bang v. Charles T. Miller Hosp.*, 251 Minn. 427, 88 N.W.2d 186 (1958); *Mohr v. Williams*, 95 Minn. 261, 104 N.W. 12 (1905). Consent may be implied where the patient is unconscious and in need of immediate attention. *Mohr v. Williams*, 95 Minn. 261, 104 N.W. 12 (1905); Dan B. Dobbs et al., *The Law of Torts* 2d § 115 (2011); see also M.S.A. § 604A.01. Consent may also be implied where the surgeon during the course of an operation to which consent has been given discovers an unanticipated condition that must be removed in order to preserve the life or health of the patient. See Dan B. Dobbs at § 115. Whether consent should be implied from the circumstances of the case is a jury question.

If the question is whether the physician has obtained an informed consent from the patient, negligence principles will be applicable. See Introductory Note and CIVJIG 80.25, Authorities. As to the distinctions between negligent nondisclosure and battery, see *Kohoutek v. Hafner*, 383 N.W.2d 295, 299–300 (Minn. 1986).

In *K.A.C. v. Benson*, 527 N.W.2d 553 (Minn. 1995), a case involving treatment of patients by a physician infected with HIV, the supreme court rejected a claim of battery by one patient:

In medical malpractice claims, battery consists of touching of a substantially different nature and character from that to which the patient consented. \* \* \* For example, in *Mohr v. Williams*, 95 Minn. 261, 104 N.W. 12 (1905), plaintiff's consent to surgery on her right ear did not authorize her doctor to operate on the left ear. A claim of battery also lies when a doctor fails to disclose a very material aspect of the nature and character of a procedure to be performed, because any supposed consent is undermined and thus an unpermitted touching occurs. \* \* \* However, a patient's consent is not rendered void when the patient is touched in exactly the way she consented \* \* \*.

T.M.W. does not allege that Dr. Benson performed a different procedure from that to which she consented. Moreover, because Dr. Benson's conduct did not significantly increase the risk that T.M.W. would contract HIV, it cannot be said that Dr. Benson failed to disclose a material aspect of the nature and character of the procedure performed. Consequently, plaintiff's battery claim must fail.

527 N.W.2d at 561.

In *Haile v. Sutherland*, 598 N.W.2d 424 (Minn. Ct. App. 1999), the court of appeals held that the plaintiff did not state a claim in battery where her physician, during the course of an operation to remove a mass from plaintiff's left chest wall and armpit, removed some benign tissue from her left breast rather than the intended mass on her chest wall. The issue was whether the plaintiff's claim was governed by M.S.A. § 145.682, subd. 2 (requiring affidavits of expert review in support of malpractice claims). The court of appeals held that the statute applied:

Any failure to excise the correct mass was based on subtle, technical errors rather than a substantial and obvious deviation from the intended procedure . . . . Under these circumstances, Haile's battery claim sounds in medical malpractice and must be established through expert testimony.

598 N.W.2d at 429.

#### Research References

*West's Key Number Digest*  
Health ¶904, 922

**CIVJIG 80.25****INFORMED CONSENT (NEGLIGENT  
NONDISCLOSURE)****Informed consent**

A failure to tell a patient about the risks of treatment or the availability of alternative treatment is negligence if:

**[(Doctor) (Dentist) (Other healthcare provider) knows the risks**

1. The (doctor, dentist or other healthcare provider) knows or should know about the risk involved in surgery or treatment, or alternatives to the surgery or treatment;]

**[Risk or alternative treatment is significant**

2. The risk or alternative treatment is significant enough that the (doctor, dentist or other healthcare provider) should tell (his/her) patient about it.

The risk or the existence of alternative treatment is significant if:

- (a) The physician knows or should know that a reasonable person in the patient's position would regard it as significant; or
- (b) It is the type of risk (or alternative treatment) that a (doctor, dentist or other health care provider) customarily tells a patient about under similar circumstances;]

**[(Doctor's) (Dentist's) (Other healthcare provider's) failure to tell patient**

3. The (doctor, dentist or health provider) does not tell the patient about the risk or alternative treatment;]

**[A reasonable patient would not consent**

4. A reasonable person in the patient's position would not

have consented to the treatment or surgery if the risk or alternative treatment had been known;] and

**[Direct cause**

5. The (undisclosed risk) (failure to disclose alternative treatment) is a direct cause of (harm) (injury) (death) to the patient.]

**[Standard for not giving information**

A failure to get informed consent is not negligence if giving the information could:

1. Complicate or hinder the treatment;
2. Cause enough emotional distress that a rational decision could not be made by the patient, or;
3. Cause psychological harm to the patient.

The (undisclosed risk) (failure to disclose alternative treatment) is a direct cause of (harm) (injury) (death) to the patient.]

---

**USE NOTE**

This instruction sets out each element a plaintiff is required to prove for a claim alleging that a doctor or dentist failed to obtain informed consent. Seldom, if ever, will an informed consent case involve disputed facts with respect to all five elements. Instead of giving the entire instruction to the jury, the court should instruct only on those elements at issue, and then draft the verdict form to correspond to those particular elements.

**AUTHORITIES**

**The Cause of Action.** To establish a claim for negligent nondisclosure, or the failure to obtain informed consent, a plaintiff must show five elements:

1. A duty on the part of a physician to know of a risk or alternative treatment plan;
2. A duty to disclose the risk or alternative program;



3. A breach of that duty;
4. Causation, that is the undisclosed risk must materialize in harm; and
5. Damages.

*Bigay v. Garvey*, 575 N.W.2d 107, 111, n. 3 (Minn. 1998), citing *Plutshack v. University of Minnesota Hosps.*, 316 N.W.2d 1, 9 (Minn. 1982). The basic standards for informed consent were established in *Cornfeldt v. Tongen*, 262 N.W.2d 684 (Minn. 1977), modified, 295 N.W.2d 638 (Minn. 1980). See also *Reinhardt v. Colton*, 337 N.W.2d 88, 95 ff. (Minn. 1983); and, *Williams v. Wadsworth*, 503 N.W.2d 120, 123 ff. (Minn. 1993).

Minnesota's "Patient's Bill of Rights" sets out a statutory duty to disclose information about treatment. M.S.A. § 144.651, subd. 9 (1998):

Patients and residents shall be given by their physicians complete and current information concerning their diagnosis, treatment, alternatives, risks, and prognosis as required by the physician's legal duty to disclose. This information shall be in terms and language the patients or residents can reasonably be expected to understand. Patients and residents may be accompanied by a family member or other chosen representative. This information shall include the likely medical or major psychological results of the treatment and its alternatives. In cases where it is medically inadvisable, as documented by the attending physician in a patient's or resident's medical record, the information shall be given to the patient's or resident's guardian or other person designated by the patient or resident as his representative. Individuals have the right to refuse this information.

A battery action will be appropriate if the touching is of "a substantially different nature and character from that to which the patient consented." M.S.A. § 144.651, subd. 9 (1998). In such cases, CIVJIG 80.22 is still appropriate.

The basic standards for informed consent were established in *Cornfeldt v. Tongen*, 262 N.W.2d 684 (Minn. 1977), modified, 295 N.W.2d 638 (Minn. 1980). There are several aspects to the duty to disclose. First, the duty to disclose arises only if the physician knew or should have known of the risk to be disclosed. If the physician had a duty to know, then the question of a duty to disclose is raised. 262 N.W.2d at 699. The test for disclosure is objective:

[R]isks of a treatment or the existence of an alternative treatment must be disclosed to the patient if a reasonable person in what the physician knows or should have known to be the patient's position would likely attach significance to that risk or alternative in formulating his decision to consent to treatment. The objective test

emphasizes patient self-determination instead of the professional competence of the physician. Both tests are invoked by evidence introduced by plaintiff.

262 N.W.2d at 700.

In *Pratt v. University of Minnesota Affiliated Hospitals & Clinics*, 414 N.W.2d 399 (Minn. 1987), the supreme court held that the negligent nondisclosure concept does not apply in genetic counseling cases so as to require disclosure of risks not inherent in undiagnosed conditions.

In *K.A.C. v. Benson*, 527 N.W.2d 553 (Minn. 1995), the supreme court reiterated the requirements for proof of a negligent nondisclosure in a case that involved the failure of a physician to disclose to his patients that he was infected with the HIV virus:

A claim for negligent nondisclosure focuses on a doctor's duty to inform patients of the risks attendant upon certain medical procedures. \* \* \* To prevail on a claim for negligent nondisclosure plaintiff must demonstrate that a reasonable person knowing of the risk would not have consented to treatment, and that the undisclosed risk actually materialized in harm \* \* \* .

Doctors have a duty to disclose risks of death or serious bodily harm which are a significant probability. \* \* \* A doctor must also disclose risks which a skilled practitioner of good standing in the community would reveal, and to the extent a doctor is aware that a patient attaches a particular significance to risks not generally considered serious enough to require discussion, these too must be discussed. \* \* \* Indeed, "[a] peculiar or unfounded fear of cancer on [plaintiff's] part might, if anything, require [defendant] to devote more time discussing its probability with her \* \* \* ."

527 N.W.2d at 553 (citations omitted). The court did not reach the duty of physicians to disclose their HIV status to patients, however, holding that "the undisclosed, minuscule 'risk' of HIV exposure did not materialize in harm to plaintiff because [she] tested negative for the HIV antibody." 527 N.W.2d at 561.

**The Standards for Disclosure.** In the first *Cornfeldt* appeal, the supreme court held that the appropriate standard for disclosure was a combination of both the medical and modified objective standard of disclosure:

The best accommodation of professional competence and patient self-determination appears to be a utilization of both the medical and a modified objective standard of disclosure. Failure to disclose a risk that would have been disclosed under accepted medical practice thus should be a sufficient, but not a necessary condition of liability. No reason appears to justify withholding information from a patient, in light of his right to self-determination, if medical

practice dictates disclosure. But even if his disclosure conforms to accepted medical practice, a physician nevertheless should be liable if he fails to inform the patient of a significant risk of treatment or of an alternative treatment.

262 N.W.2d at 702.

The supreme court quoted with approval the standard adopted by the California Supreme Court in *Cobbs v. Grant*, 8 Cal.3d 229, 244, 104 Cal.Rptr. 505, 515, 502 P.2d 1, 11 (1972):

[W]hen a given procedure inherently involves a known risk of death or serious bodily harm, a medical doctor has a duty to disclose to his patient the potential of death or serious harm, and to explain in lay terms the complications that might possibly occur. Beyond the foregoing minimal disclosure, a doctor must also reveal to his patient such additional information as a skilled practitioner of good standing would provide under similar circumstances.

The Minnesota Supreme Court also stated that expert testimony is necessary to establish accepted medical practice and to identify the risks of the treatment, the gravity of those risks, and the likelihood that the risks will materialize. 262 N.W.2d at 702.

In the second appeal, 295 N.W.2d 638 (1980), the court clarified the standards applicable to informed consent cases. Aside from clarifying the causation standards, the court indicated its intent to broaden the standards for disclosure. The physician's duty is "[t]o disclose the risk or alternate treatment plan by evidence establishing that a reasonable person in what the physician knows or should have known to be the patient's position would likely attach significance to that risk or alternative in formulating his decision to consent to treatment." 295 N.W.2d at 640. The court explained its decision as follows:

To the extent that our prior opinion suggests that a physician's duty to disclose extends only to significant risks, e.g., death or serious harm, it is hereby modified. Further consideration of the standard of disclosure has led us to the conclusion that the above-stated objective standard accommodates professional competence and patient self-determination.

295 N.W.2d at 640, n. 2.

In *Kinikin v. Heupel*, 305 N.W.2d 589 (Minn. 1981), the Supreme Court stated that the footnote language in the second appeal in *Cornfeldt v. Tongen* "did not reduce the scope of disclosure delineated in *Cornfeldt I*." 305 N.W.2d at 595. The court held that "[a] physician must disclose risks of death or serious bodily harm which are of significant probability. Risks that a skilled practitioner of good standing in the community



would reveal must also be disclosed. \* \* \* 305 N.W.2d at 595. The basic informed consent instruction can be expanded by adding these standards to the second element.

**Requirement of Expert Testimony.** Expert testimony is necessary to establish that a risk in a procedure exists, that it is accepted medical practice for the physician to know of that risk, and that the undisclosed risk resulted in harm. *Clark v. Miller*, 378 N.W.2d 838, 845 (Minn. Ct. App. 1986), rev. denied (Minn. Mar. 14, 1986). The plaintiff must also support a negligent nondisclosure claim with expert testimony showing that it is more probable than not that the undisclosed risk materialized in harm. *Goodrich v. McCannel*, 382 N.W.2d 235, 239 (Minn. Ct. App. 1986).

**Causation Issues.** There are two causation issues in informed consent cases. The first issue is whether the plaintiff would have consented to the treatment had the patient known of the risks or alternative treatments. The standard for determining the proximate cause issue is objective:

Whether a reasonable person in the plaintiff's position would have refused the treatment had he been informed of the undisclosed risk. The objective test is the preferable measure of probable cause. It is probably the test a jury applies in evaluating the credibility of a patient's testimony under the subjective standard. Moreover, if the patient is unable to testify \* \* \* reconstruction of his hypothesized state of mind seems a harsh evidentiary requirement. But if the patient is available to testify, the subjective test exposes the physician to the patient's perhaps bitter evaluation in light of the unsuccessful treatment of what he would have decided.

*Cornfeldt*, 262 N.W.2d at 701. The second causation question concerns the relationship between the failure to disclose and the injuries sustained by the plaintiff. The standard for deciding the question was established in the second *Cornfeldt* appeal. See 295 N.W.2d 638 (1980).

While in the prior case we focused our discussion of causation on the question whether to adopt a subjective or objective standard and ultimately determined that a plaintiff must show that a reasonable person, had he been informed of the risk, would not have consented to the procedure, we also stated, and now emphasize, that an element of liability is that the undisclosed risk materialized in harm as a result of the treatment.

295 N.W.2d at 640.

**Additional Treatment and Alternative Treatment.** In *Madsen v. Park Nicollet Medical Ctr.*, 431 N.W.2d 855 (Minn. 1988), doctors recommended home bed rest with monitoring; the plaintiff contended



doctors should have recommended hospitalized bed rest. The court did not view hospitalized bed rest as *alternative* treatment, but rather as *additional* treatment. The court declined to expand liability based upon failure to advise of *additional* treatment and the risk inherent in not taking additional treatment. The court stated:

The informed consent/nondisclosure doctrine does not involve negligence in the administration of treatment, in failure to treat, or in failure to properly diagnose. Physician liability is imposed by the rule only for failure to secure the patient's informed consent to treatment which results in harm which the patient would have avoided by declining the treatment or by choosing an alternative treatment.

431 N.W.2d at 861.

The Minnesota Supreme Court's decision in *Pratt v. University of Minnesota Affiliated Hospitals and Clinics*, 414 N.W.2d 399 (Minn. 1987) leaves open the possibility that a claim of malpractice could be founded upon a doctor's failure to advise a patient of the availability of *alternative* treatment.

**The Therapeutic Privilege.** In the first appeal in *Cornfeldt v. Tongen*, 262 N.W.2d 684 (Minn. 1977), the court recognized the therapeutic privilege, which justifies withholding of information if the disclosure would be unhealthy to the patient. "The privilege is applicable only if disclosure of the information would complicate or hinder treatment, cause such emotional distress as to preclude a rational decision, or cause psychological harm to the patient." *Id.* at 700. The court also noted that in a situation where nondisclosure is warranted, the physician should seek consent from a close relative. 262 N.W.2d at 701, n. 14.

Nondisclosure of risks is also justified in emergency situations, see *Kinikin v. Heupel*, 305 N.W.2d 589, 593, n. 2 (Minn. 1981); *Cornfeldt v. Tongen*, 262 N.W.2d 684, 700, n. 13 (Minn. 1977); or where the risks are commonly known, see 262 N.W.2d at 700 n.13.

#### Research References

*West's Key Number Digest*  
Health ⇨904, 922

## CIVJIG 80.28

## PATIENT'S DUTY TO FOLLOW INSTRUCTIONS

## Patient's duty to follow instructions

A patient must follow reasonable advice and take reasonable treatment prescribed by the (doctor) (dentist).

---

USE NOTE

For an instruction on mitigation of damages once malpractice is established, see CIVJIG 91.45. For a discussion of mitigation of damages and comparative fault, and discussion of fault and diminished capacity, see Category 28, Introductory Note.

## AUTHORITIES

Since Minnesota applies comparative fault principles to malpractice actions, there may be occasions when it is appropriate to submit to the jury the issue of the patient's degree of fault. Early Minnesota cases held that where a patient refuses to submit to reasonable treatment prescribed by a doctor, from that time on the fault is the patient's, not the doctor's. *Peterson v. Branton*, 137 Minn. 74, 78, 162 N.W. 895, 897 (1917). More recently, the court of appeals has recognized that a patient's delay in seeking treatment or diagnosis may constitute fault on the part of the patient. *Roers v. Engebretson*, 479 N.W.2d 422, 423 (Minn. Ct. App. 1992). In *Martineau v. Nelson*, 311 Minn. 92, 103 n. 15, 247 N.W.2d 409, 416, n. 15 (1976), however, the Minnesota Supreme Court noted that, for example, a patient's failure to have a second operation could not constitute negligence, because her doctors had not recommended that procedure.

## Research References

*West's Key Number Digest*  
Health ☞766, 827

**CIVJIG 80.31****DUTY OF NURSE****Introduction**

The matter before the Court is a medical negligence action. It is sometimes referred to as medical malpractice.

(Plaintiff) has alleged that (defendant) was negligent in providing (professional health care) to (plaintiff) and that the (defendant's) negligence was a direct cause of (injury, harm or death) to (plaintiff).

**Definition of "negligence" by a nurse**

Negligence is the failure to use reasonable care under the circumstances.

Reasonable care by a nurse is care that meets an accepted standard of care a nurse, who is in a similar practice in a similar community would use or follow under similar circumstances. A failure to provide care that meets an accepted standard of care under the circumstances would be negligence.

**Failure of a treatment**

A nurse is not negligent simply because his or her efforts are unsuccessful.

The failure of a treatment is not negligence if the treatment was an accepted treatment, based on the information the nurse had or reasonably should have had when the choice was made.

[A nurse must use reasonable care to get the information needed to exercise his or her professional judgment. An unsuccessful treatment chosen because a nurse did not use this reasonable care would be negligence.]

[The fact that a nurse may have followed standing orders

of (the hospital) (a doctor) (a dentist) does not relieve the nurse of the duty to use reasonable care.]

---

#### USE NOTE

In cases involving advanced practice nurses, CIVJIG 80.10 may be appropriate.

#### AUTHORITIES

The standard of care applicable to nurses while rendering professional services is the same as that applicable to other professionals. *See Plutshack v. University of Minnesota Hospitals*, 316 N.W.2d 1, 5 (Minn. 1982); W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on The Law of Torts* § 32 (5th ed. 1984); *cf. Swigerd v. Ortonville*, 246 Minn. 339, 75 N.W.2d 217 (1956).

The Minnesota Supreme Court has refused to impose a duty on nurses to insist that a physician perform an examination on a patient. *Mercil v. Mathers*, 517 N.W.2d 328 (Minn. 1994).

#### Research References

*West's Key Number Digest*  
Health Ⓒ652, 827



**CIVJIG 80.37****DUTY OF HOSPITAL****Hospital's duty to patients**

A hospital must use reasonable care for the protection and well-being of its patients. In deciding whether the hospital used reasonable care, consider, among other things:

1. What facts the hospital knew or should have known about the physical and mental state of (plaintiff) (decedent) (person who injured (plaintiff) (decedent))
2. The training and experience of its employees in the type of treatment given to (plaintiff) (decedent)
3. Whether these employees were, or should have been, able to anticipate and take adequate precautions for the safety of (plaintiff) (decedent)
4. Whether the hospital claimed to the (public) (admitting doctors) that it was equipped to treat and care for a patient requiring the treatment and care used.

A hospital must use reasonable care in serving a patient. Failure to use reasonable care is negligence.

---

**USE NOTE**

If the hospital holds itself out as a hospital providing special care and service, an instruction similar to CIVJIG 80.10 should be used. If injury arises from the condition of the premises, CIVJIG 85.25 or 85.28 should be given.

**AUTHORITIES**

A hospital has the duty to exercise such reasonable care for the protection and well-being of a patient as the patient's known physical and mental condition requires, or as is required by the patient's condition as it ought to be known to the hospital in the exercise of ordinary

care. This duty included the protection of the patient from self-injury as well as from injury caused by others. *Tomfohr v. Mayo Found.*, 450 N.W.2d 121, 124 (Minn. 1990), citing *Sylvester v. Northwestern Hosp.*, 236 Minn. 384, 386–387, 53 N.W.2d 17, 19 (1952); *Mounds Park Hosp. v. Von Eye*, 245 F.2d 756, 759 (8th Cir. 1957); *Clements v. Swedish Hosp.*, 252 Minn. 1, 7, 89 N.W.2d 162, 165–166 (1958); and *Mesedahl v. St. Luke's Hosp. Ass'n*, 194 Minn. 198, 200, 259 N.W. 819, 820 (1935). See also *Roettger v. United Hospitals*, 380 N.W.2d 856, 862 (Minn. Ct. App. 1986) (holding evidence sufficient for the jury to conclude that the hospital's negligence in failing to have sufficient security on the patient floors was a substantial factor in causing the plaintiff's injuries); *Trepanier v. McKenna*, 267 Minn. 145, 149, 125 N.W.2d 603, 606 (1963); *Quick v. Benedictine Sisters Hosp. Ass'n*, 257 Minn. 470, 479–480, 102 N.W.2d 36, 43–45 (1960); *Nelson v. Swedish Hosp.*, 241 Minn. 551, 557–558, 64 N.W.2d 38, 43 (1954).

In *Tomfohr v. Mayo Found.*, 450 N.W.2d 121 (Minn. 1990), the Minnesota Supreme Court stated that when a hospital voluntarily agreed to protect a patient from self-inflicted injury, the hospital assumed the duty of exercising reasonable care to see that the patient did not injure himself. As a consequence, the court concluded, the patient could not be held responsible in whole or in part for the breach of the duty to exercise care for his own well-being. *Tomfohr*, 450 N.W.2d at 125. In response to a certified question from the United States District Court for the District of Minnesota, the supreme court stated that it would not be error for the trial court to refuse to give a capacity-based instruction to the jury concerning the patient's comparative fault. The court of appeals reached a similar result in *Koehler v. Abbott-Northwestern*, 1997 WL 370376, Nos. C4-96-1943 and CX-96-1932 (Minn. Ct. App. 1997).

In *Diedrich v. State*, 393 N.W.2d 677 (Minn. Ct. App. 1986), the court of appeals found that the state assumed a statutory duty to control the plaintiff, who had been involuntarily committed at a state hospital, and to prevent the patient from injuring himself. Assumption of the duty exhausted the state's discretion and was sufficient to overcome the state's motion to dismiss for failure to state a claim. 393 N.W.2d at 683.

In *Larson v. Wasemiller*, 738 N.W.2d 300 (Minn. 2007), as part of their medical malpractice claims, plaintiffs alleged that St. Francis Medical Center was negligent in granting surgery privileges to one of the treating physicians. The supreme court recognized the tort of negligent credentialing. The court stated:

Given our previous recognition of a hospital's duty of care to protect its patients from harm by third persons and of the analogous tort of negligent hiring, and given the general acceptance in the common law of the tort of negligent selection of an independent contractor, as recognized by the Restatement of Torts, we conclude that the tort of negligent credentialing is inherent in and the natural extension of well-established common law rights.

*Larson*, 738 N.W.2d at 306.

Research References

*West's Key Number Digest*  
Health ⌘655, 827

## CIVJIG 80.40

**LIABILITY OF HOSPITAL FOLLOWING DOCTOR'S ORDERS****Hospital's duty to follow a doctor's orders**

A hospital has a duty to follow the orders of a patient's doctor. In doing so, it must exercise reasonable care.

However, a hospital should not follow orders if it would be unreasonable to do so.

**Definition of reasonable care**

In deciding if the hospital acted reasonably in following the doctor's orders, consider, among other things:

1. Whether the hospital knew facts about the patient's condition (including new developments) unknown to the doctor
2. Whether consultation with the doctor or staff doctors or other qualified employees was reasonably available or practicable under the circumstances
3. Whether the hospital was acting under the direct supervision of the doctor.

---

**AUTHORITIES**

Nurses and interns at a general hospital are charged with the duty of carrying out the instructions of the attending physician, except in cases of emergency. When an emergency arises, it is incumbent upon the nurses and interns to exercise their own judgment until report can be made to and instructions received from the attending physician. The duty to obey the attending physician's orders does not pertain if the orders are so obviously negligent as to lead any reasonable person to anticipate that substantial injury will result to the patient from the execution of such orders. *See Mesedahl v. St. Luke's Hosp. Ass'n*, 194 Minn. 198, 259 N.W. 819 (1935).

**Research References**

*West's Key Number Digest*  
Health ¶618, 656, 827



## CIVJIG 80.43

LIABILITY OF HOSPITAL FOR NEGLIGENCE OF  
PHYSICIAN OR NURSE

[The Committee recommends no instruction.]

---

USE NOTE

The law governing vicarious liability is generally applicable to hospitals with respect to the negligence of resident doctors and nurses. Give CIVJIG 30.10 to 30.65, as may be appropriate to the case.

## AUTHORITIES

As a general rule, Minnesota hospitals are vicariously liable for a physician's acts only if the physician is an employee of the hospital. *McElwain v. Van Beek*, 447 N.W.2d 442, 446 (Minn. Ct. App. 1989). In *Dang v. St. Paul Ramsey Medical Ctr., Inc.*, 490 N.W.2d 653 (Minn. Ct. App. 1992), the hospital was vicariously liable for the acts of a resident in its employ. In addition, the court in *Dang* upheld a jury verdict finding that, based on the facts in that case, a joint enterprise existed between the hospital and the physician's clinic supervising the resident.

**Loaned Servant.** When a hospital assigns one of its nurses to perform a duty for a staff physician or surgeon in actually treating a patient, and surrenders direction and control of the nurse in that respect, the nurse becomes the servant of the physician or surgeon insofar as the nurse's services relate to the controlled work, and the hospital is not liable for the negligence of the nurse while actually performing such work. See *Synnott v. Midway Hosp.*, 287 Minn. 270, 273-275, 178 N.W.2d 211, 213-215 (1970); *Swigerd v. Ortonville*, 246 Minn. 339, 342, 75 N.W.2d 217, 220 (1956); *Wallstedt v. Swedish Hosp.*, 220 Minn. 274, 277, 19 N.W.2d 426, 428 (1945); *St. Paul-Mercury Indemnity Co. v. St. Joseph's Hosp.*, 212 Minn. 558, 559-560, 4 N.W.2d 637, 638 (1942).

## CIVJIG 80.46

**LIABILITY OF HOSPITAL FOR DAMAGE OR  
INJURY TO THIRD PERSON BY PATIENT****Hospital's duty to control a patient**

A hospital has a duty to control a patient suffering from a mental illness or disease who is committed by the court.

**Deciding negligence**

To find the hospital negligent, you must find that the hospital failed to exercise reasonable control over the patient.

Factors in deciding negligence include, among others:

1. Whether the hospital knew or should have known about characteristics, habits, and past conduct of the patient similar to that which resulted in the injury
2. Whether the hospital knew or should have known about the need to control the patient in the particular instance
3. Whether the hospital had an ability to control the patient and an opportunity to do so.

---

**AUTHORITIES**

The predecessor instruction, Civil JIG 437, was given by the trial court and approved by the Minnesota Supreme Court in *Rum River Lumber Co. v. State*, 282 N.W.2d 882, 884 (Minn. 1979). The court found support for the instruction in prior Minnesota case law. 282 N.W.2d at 885, citing *Sylvester v. Northwestern Hosp.*, 236 Minn. 384, 387, 53 N.W.2d 17, 19 (1952).

**Research References**

*West's Key Number Digest*  
Health ☞752 to 758, 827

## ATTORNEYS

## CIVJIG 80.55

## DUTY OF AN ATTORNEY

**Standards of professional practice for an attorney**

An attorney must use the same degree of skill and learning that a practitioner would use who is:

1. In good standing, and
2. In a similar practice, and
3. In similar circumstances.

An attorney must act in good faith and use reasonable care in applying that skill and learning in representing a client.

An attorney is not negligent if he or she makes an error in judgment. This is true as long as the attorney acts in the reasonable belief that the advice is well founded and in the best interests of the client.

---

**AUTHORITIES**

The standard of care an attorney owes to a client is repeated in several cases. See *Jerry's Enterprises, Inc. v. Larkin, Hoffman, Daly & Lindgren*, 711 N.W.2d 811, 816 (Minn. 2006); *Rouse v. Dunkley & Bennet*, 520 N.W.2d 406, 408 (Minn. 1994); *Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan*, 494 N.W.2d 261, 265 (Minn. 1992).

For earlier cases, see *Blue Water Corp., Inc. v. O'Toole*, 336 N.W.2d 279, 281 (Minn. 1983); *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980); *Godbout v. Norton*, 262 N.W.2d 374, 376 (Minn. 1977), cert. denied, 437 U.S. 901, 98 S.Ct. 3086, 57 L.Ed.2d 1131 (1978); *Christy v. Saliterman*, 288 Minn. 144, 150, 179 N.W.2d 288, 293–294 (1970); *Spannaus v. Larkin, Hoffman, Daly, and Lindgren, Ltd.*, 368 N.W.2d 395, 398 (Minn. Ct. App. 1985); *Hyduke v. Grant*, 351 N.W.2d 675, 677 (Minn. Ct. App. 1984).

**Research References**

*West's Key Number Digest*  
Attorney and Client ⇨107, 129(3)

*Legal Encyclopedias*

C.J.S., Attorney and Client §§ 300, 308 to 310, 321 to 322, 331 to 334



## CIVJIG 80.58

**DUTY OF AN ATTORNEY-SPECIALIST****Standards of practice for an attorney-specialist**

An attorney who claims a specialty must use the same degree of skill and learning as a specialist would use who is:

1. In the same field, and
2. In similar circumstances and cases.

---

**USE NOTE**

The Minnesota State Board of Legal Certification now has standards for certification of Minnesota lawyers as Civil Trial, Criminal Law, Labor and Employment Law, and Real Property Specialists. This instruction would appear to be appropriate in all situations where attorneys have advertised the fact of their certification. This instruction may also be given in situations where attorneys hold themselves out as specialists and communicate the fact of such specialization to the client who relies upon the assumed special abilities when retaining the lawyer to handle the client's legal matter.

**AUTHORITIES**

*See also* Plan for the Minnesota State Board of Legal Certification, Rules 1 through 9.

**Research References**

*West's Key Number Digest*  
Attorney and Client ¶107, 129(3)

*Legal Encyclopedias*  
C.J.S., Attorney and Client §§ 300, 308 to 310, 321 to 322, 331 to 334

**CIVJIG 80.61****ATTORNEY-CLIENT RELATIONSHIP—CONTRACT****Contract between an attorney and a client**

A contract between an attorney and a client is created if:

1. The client asks for the attorney's services or offers to hire the attorney, and
2. The attorney agrees to perform requested services or accepts the offer of employment.

**Written and unwritten contracts**

The contract for professional employment may be either oral or written.

**Inferred contract between an attorney and a client**

A contract between an attorney and a client can be inferred if:

1. The client asks for an attorney's services, or offers to hire the attorney, and
2. The attorney acts or performs services for the client, even if the attorney does not expressly agree to accept the employment.

**[Service in the past**

The fact that an attorney has acted for, or had a contract with, a client on an unrelated matter in the past does not mean a professional relationship or a contract exists in this case.

However, the existence of a former relationship may be considered in deciding whether a professional relationship or contract of professional employment does exist now.]

## AUTHORITIES

The Minnesota Supreme Court reaffirmed that tort and contract are two alternative models used to analyze the attorney-client relationship. Under the contract model, "there must be an express or implied agreement to hire the lawyer." *In re Perry*, 494 N.W.2d 290, 295 (Minn. 1992). Under the tort model, "an attorney-client relationship is created whenever an individual seeks and receives legal advice from an attorney in circumstances in which a reasonable person would rely on such advice." 494 N.W.2d at 294–295. *See also Christy v. Saliterman*, 288 Minn. 144, 150–151, 179 N.W.2d 288, 293–294 (1970).

In *Gramling v. Memorial Blood Centers of Minnesota*, 601 N.W.2d 457 (Minn. Ct. App. 1999), rev. denied (Minn. Dec. 21, 1999), the issue was whether an attorney-client relationship existed between the plaintiffs (a mother and her daughter) and a county that initiated paternity proceedings in which the father of the child was erroneously excluded.

The court of appeals held that there was no attorney-client relationship based either on a contract or tort theory. When the county brought the initial paternity proceeding, and the mother executed an assignment of support in order to receive public assistance, the county was fulfilling its statutory mandate. Therefore, the court concluded that there was no express contract establishing an attorney-client relationship. The court of appeals also concluded that there was no implied contract of representation, because the only communication the county had was with the mother concerning public assistance, which did not create an implied contract of representation. The court also noted as a matter of law that "a party's mere expectation that an attorney will represent him or her, is insufficient to create an attorney-client relationship." 601 N.W.2d at 460.

## Research References

*West's Key Number Digest*  
Attorney and Client ⇨63, 64

*Legal Encyclopedias*  
C.J.S., Attorney and Client §§ 198 to 204, 220 to 223, 283

## CIVJIG 80.64

ATTORNEY-CLIENT RELATIONSHIP—NO EXPRESS  
OR IMPLIED CONTRACT

## Attorney-client relationship

An attorney-client relationship exists if:

1. (Name of party) asked for and got legal advice from (name of attorney), and
2. (Name of party) reasonably relied on that advice, and
3. (Name of attorney) could have reasonably anticipated that under the circumstances, (name of party) would rely on that advice.

---

AUTHORITIES

In *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980), the supreme court held that the issue of attorney-client relationship could be analyzed either in tort or contract terms. The court explained the following differences between contract and tort theories:

Under a negligence approach it must essentially be shown that defendant rendered legal advice (not necessarily at someone's request) under circumstance which made it reasonably foreseeable to the attorney that if such advice was rendered negligently, the individual receiving the advice might be injured thereby. \* \* \* Or, stated another way, under a tort theory, "[a]n attorney-client relationship is created whenever an individual seeks and receives legal advice from an attorney in circumstances in which a reasonable person would rely on such advice." \* \* \* A contract analysis requires the rendering of legal advice pursuant to another's request and the reliance factor, in this case, where the advice was not paid for, need be shown in the form of promissory estoppel.

291 N.W.2d at 693, n. 4. See also *Langeland v. Farmers State Bank*, 319 N.W.2d 26, 30 (Minn. 1982) (under the negligence theory, "the relationship is created whenever a person seeks and receives legal advice from a lawyer under circumstances in which a reasonable person would rely on the advice").

In *Gramling v. Memorial Blood Centers of Minnesota*, 601 N.W.2d 457 (Minn. Ct. App. 1999), rev. denied (Minn. Dec. 21, 1999), the issue



was whether an attorney-client relationship existed between the plaintiffs (a mother and her daughter) and a county that initiated paternity proceedings in which the father of the child was erroneously excluded.

The court of appeals held that there was no attorney-client relationship based either on a contract or tort theory. Under the tort theory, “an attorney-client relationship is created whenever an individual seeks and receives legal advice from an attorney in circumstances in which a reasonable person would rely on such advice.” 601 N.W.2d at 460, *citing TJD Dissolution Corp. v. Savoie Supply Co.*, 460 N.W.2d 59, 62 (Minn. Ct. App. 1990). The court concluded that “[a]bsent a request for legal advice,” no “attorney-client relationship existed under the tort theory of representation.” 601 N.W.2d at 460.

### Research References

*West's Key Number Digest*  
Attorney and Client ⇨63

*Legal Encyclopedias*  
C.J.S., Attorney and Client §§ 198 to 199, 220 to 223, 283

## CIVJIG 80.66

## LEGAL MALPRACTICE—CAUSATION

[See CIVJIG 27.10, CIVSVF 80.97, and CIVSVF 80.98.]

---

USE NOTE

The basic instruction on direct cause, CIVJIG 27.10, can be used in a legal malpractice action. The Committee recommends crafting an appropriate special verdict form question with respect to the issue of cause-in-fact or actual cause. CIVSVF 80.97 can be used in actions involving an alleged destruction of a cause of action (case-in-a-case) and CIVSVF 80.98 can be modified for use in actions involving alleged malpractice in transactional or non-litigation settings.

## AUTHORITIES

A plaintiff making a claim of legal malpractice must prove duty, breach, and causation. Traditionally, these elements of a legal malpractice action have been formulated as follows:

1. the existence of an attorney-client relationship;
2. acts constituting negligence or breach of contract;
3. that such acts were the proximate cause of the plaintiff's damages;
4. that but for defendant's conduct the plaintiff would have been successful in the prosecution or defense of the action.

*Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980), The Minnesota Supreme Court reaffirmed the basic elements of legal malpractice in *Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan*, 494 N.W.2d 261 (Minn. 1992), and in *Rouse v. Dunkley & Bennett*, 520 N.W.2d 406 (Minn. 1994).

This formulation, however, assumes that the plaintiff's claim is based upon an alleged destruction of a cause of action. In this type of claim, it makes sense to use a special verdict question that asks the jury whether, but for the attorney's negligence, the plaintiff would have been successful in the underlying action, the "case-within-a-case." CIVSVF 80.98 is meant for use in that type of legal malpractice action.

In legal malpractice actions arising from transactional work or other legal work not involving dispute resolution, there may be no underlying action or "case-within-a-case," but the plaintiff must still

demonstrate that the alleged negligence was the cause-in-fact of the claimed damages. So, for example, in *Jerry's Enterprises, Inc. v. Larkin, Hoffman, Daly & Lindgren*, 711 N.W.2d 811 (Minn. 2006), the plaintiff alleged that the attorney had failed to identify a possible cloud on the title when reviewing closing documents. The court held that "in an action for legal malpractice arising out of representation in transactional matters, the fourth element of the cause of action is modified to require a plaintiff to show that, but for defendant's conduct, the plaintiff would have obtained a more favorable result in the underlying transaction than the result obtained." *Jerry's Enterprises*, 711 N.W.2d at 819. Similarly, in *Blue Water Corp. v. O'Toole*, 336 N.W.2d 279 (Minn. 1983), the plaintiffs alleged that the attorney they retained to help them get a bank charter had been negligent in failing to file the application on their behalf. The court ruled that the plaintiffs not only needed to prove the attorney was negligent, but must then establish "that, had the application been timely filed, the Commission would have granted them the bank charter." 336 N.W.2d at 282. CIVSVF 80.98, which uses the fact situation of *Blue Water* as an example, can be modified for use in malpractice claims not involving the destruction of a cause of action.

#### Research References

*West's Key Number Digest*

Attorney and Client ⇨105.5, 129(3)

*Legal Encyclopedias*

C.J.S., Attorney and Client §§ 321 to 322, 331 to 334

## OTHER PROFESSIONALS

## CIVJIG 80.75

DUTY OF PUBLIC ACCOUNTANT, ARCHITECT,  
ENGINEER, AND OTHER PROFESSIONAL

## Standards of professional practice

A (public accountant) (architect) (engineer) (\_\_\_\_) must use the same degree of skill and learning as a practitioner would use who is:

1. In good standing, and
2. In a similar practice, and
3. In similar circumstances.

A (public accountant) (architect) (engineer) (\_\_\_\_) must use reasonable care in applying that skill and learning in serving a client.

---

**AUTHORITIES**

To recover in a malpractice action against an accountant, a plaintiff must show:

1. The existence of a duty arising from an accountant-client relationship;
2. The breach of that duty;
3. Proximate causation; and
4. Damages.

*Olson, Clough & Straumann CPA's v. Trayne Properties, Inc.*, 392 N.W.2d 2 (Minn. Ct. App. 1986), citing *Vernon J. Rockler & Co. v. Glickman, Isenberg, Lurie & Co.*, 273 N.W.2d 647 (Minn. 1978). In *Vernon J. Rockler*, 273 N.W.2d at 650, the court also held that the plaintiff in that case needed to demonstrate "factual causation," that is, that "but for" the advice the accountant gave, the plaintiff would not have made the transfers. *Id.* at 650. See also *Campbell v. Valley State Agency*, 407 N.W.2d 109, 111 (Minn. Ct. App. 1987).



In *Ouellette v. Subak*, 391 N.W.2d 810 (Minn. 1986), the supreme court stated that "honest error in judgment" language is inappropriate in defining the scope of a professional's duty. Although *Ouellette* was a medical malpractice case, the court's conclusions appear applicable to all professional liability cases. The court has declined to apply strict liability or implied warranty doctrine to cover vendors of professional services. See *City of Mounds View v. Walijarvi*, 263 N.W.2d 420, 425 (Minn. 1978). Although economic loss is not recoverable in a strict liability action, economic loss may be recovered in an action for the negligent performance of professional services. See *Valley Farmers' Elev. v. Lindsay Bros.*, 380 N.W.2d 874, 877 (Minn. Ct. App. 1986).

Minnesota has declined to adopt the so-called "*Lincoln Grain*" rule (after *Lincoln Grain, Inc. v. Coopers & Lybrand*, 216 Neb. 433, 345 N.W.2d 300, 307 (Neb. 1984)), which narrows the definition of the client's contributory fault to only those situations in which that fault contributes to the accountant's failure to perform the contract and report the truth. In *Halla Nursery v. Baumann-Furrie & Co.*, 454 N.W.2d 905 (Minn. 1990), the Minnesota Supreme Court rejected the *Lincoln Grain* rule, noting that the court's past decisions had "broadly construed the comparative fault act and applied it to other professional malpractice actions," and that the broad definition of fault in the Act "can be particularly appropriate in such actions." *Halla Nursery*, 445 N.W.2d at 909.

In *Bonhiver v. Graff*, 311 Minn. 111, 248 N.W.2d 291 (1976), the Minnesota Supreme Court relied on a tentative draft of the Restatement (Second) of Torts § 552 to hold that an accounting firm owed a duty of care to an insurance broker because a chain of reliance linked the firm, the state insurance commission whom the firm knew would rely on its work product, and the insurance broker within the class of persons who should be protected by the commissioner's reliance. 311 Minn. at 126, 248 N.W.2d at 301. For a more complete discussion of this theory of liability, see the Authorities section for CIVJIG 57.20.

The court of appeals recently revisited this theory of liability in *Noram Investment Services, Inc. v. Stirtz Bernards Boyden Surdel & Larter, P.A.*, 611 N.W.2d 372 (Minn. Ct. App. 2000). In that case, the plaintiff brought suit against the defendant accounting firm, which had issued an audit report included in a company's SEC filing and made available to the public. The plaintiff began lending margin credit to purchasers of the company's stock, holding the stock as collateral for the loan. When the American Stock Exchange stopped trading the stock due to allegations of insider trading and possible stock manipulation, the stock became worthless. The plaintiff sued the defendant accounting firm for negligent misrepresentation, claiming it had relied on the audit report in lending margin credit. The court of appeals, citing *Bonhiver v. Graff*, 311 Minn. 111, 248 N.W.2d 291 (1976), ruled that the plaintiff, unlike the insurance broker in *Bonhiver*, was not "clearly in the class that should be protected by the SEC's reliance." 611 N.W.2d at 375. Holding otherwise, the court opined, could lead to virtually unlimited liability.

In *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 218 n.4 (Minn. 2007), the court set out the standards applicable to account malpractice cases:

Accountants are held to the same standard of reasonable care as lawyers, doctors, architects, and other professional people engaged in furnishing skilled services for compensation. \* \* \* Thus, to recover [a] plaintiff would need to prove a duty (the existence of an accountant-client relationship), the breach of that duty (the failure of the accountants to discharge their duty of reasonable care), factual causation (that “but for” the advice plaintiff would not have made transfers), proximate causation (that plaintiff’s increased tax liability was a foreseeable consequence of defendant’s advice), and damages (that plaintiff actually suffered increased tax liability due to defendant’s advice). *Vernon J. Rockler & Co. v. Glickman, Isenberg, Lurie & Co.*, 273 N.W.2d 647, 650 (Minn.1978).

“One who undertakes to render professional services is under a duty . . . to exercise such care, skill, and diligence as men in that profession ordinarily exercise under like circumstances. *Pond Hollow Homeowners Ass’n v. The Ryland Group, Inc.*, 779 N.W.2d 920, 923 (Minn. Ct. App. 2010), quoting *City of Eveleth v. Ruble*, 302 Minn. 249, 253, 225 N.W.2d 521, 524 (1974) (design engineers’ duties in professional negligence action).

Engineers are required to exercise the “skill and judgment which can be expected from similarly situated professionals.” 779 N.W.2d at 923, quoting *Waldor Pump & Equip. Co. v. Orr-Schelen-Mayeron & Assocs., Inc.*, 386 N.W.2d 375, 377 (Minn. Ct. App. 1986). Expert testimony is typically required to establish the standard of care. 779 N.W.2d at 923.

In *Christians v. Grant Thornton, LLP*, 733 N.W.2d 803 (Min. Ct. App. 2007), rev. denied (Minn. Sept. 18, 2007), the court of appeals held that damages for “deepening insolvency” were not recoverable in an accountant malpractice action. The plaintiff trustee in bankruptcy’s theory was that the trustee’s company was damaged by becoming more insolvent than it would have absent the alleged negligence of the defendant Grant Thornton. The court rejected the claim:

We are persuaded that permitting deepening-insolvency damages would needlessly replicate and consequently confuse the current measure of damages for auditor-malpractice actions. Once the deepening-insolvency theory is stripped of the additional-loans component, we are unable to discern what recoverable harms the concept captures that the ordinary measures of damages in auditor-malpractice and breach-of-contract claims do not. . . . We therefore hold that deepening insolvency is not a recognized form of corporate damage in Minnesota.

Id. at 811–12. In *Christians*, the court of appeals applied the “but

for” test for purposes of determining factual causation. 733 N.W.2d at 812.

**Research References**

*West's Key Number Digest*

Accountants ⚡8; Negligence ⚡322, 1205(4), 1205(5), 1728, 1738

*Legal Encyclopedias*

C.J.S., Accountants §§ 11 to 13, 15; Negligence §§ 163 to 164, 399, 595 to 596, 600, 871, 880 to 882, 891



## SPECIAL VERDICT FORMS

## CIVSVF 80.90

## MEDICAL MALPRACTICE

1. Was (defendant) negligent in (his) (her) care and treatment of (plaintiff)?

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Was (defendant)'s negligence in providing that care and treatment a direct cause of harm or injury to (plaintiff)?

---

Yes or No

[List damages question(s) appropriate to the case involved.]

---

USE NOTE

The questions in this special verdict form correspond with the following jury instructions:

1. CIVJIG 80.10: Duty of Doctor, Dentist.
2. CIVJIG 27.10: Direct Cause.

Some courts choose to instruct the jury to not answer the damages questions if there was a finding of no negligence or causation. An appropriate instruction in this situation would read: "If you answered no to questions 1 or 2, do not answer the following questions. Stop here. Your verdict is complete." One rationale for not requiring answers to the damages questions in cases of no liability is that the plaintiff in a medical malpractice case, unlike the standard personal injury plaintiff, typically suffers from some injurious disease or condition before the tortious conduct occurs. Requiring the jury to answer the damages questions creates a risk of a perverse verdict. *See, e.g., Fehling v. Levitan*, 382 N.W.2d 901 (Minn. Ct. App. 1986)), rev. denied (Minn. April 24, 1986).



CIVSVF 80.92

MEDICAL MALPRACTICE—INFORMED CONSENT

1.

Did (defendant) fail to inform (plaintiff) about [the risks involved in the (specific procedure, operation, or treatment)] [the alternatives to that (specific procedure, operation, or treatment)]?

\_\_\_\_\_

Yes or No
2.

*If your answer to Question 1 was “Yes,” then answer this question:* Would a reasonable person in the position of (plaintiff) have refused to consent to the (specific procedure, operation, or treatment) if [those risks] [those alternatives] had been known?

\_\_\_\_\_

Yes or No
3.

*If your answer to Question 2 was “Yes,” then answer this question:* Was (defendant)’s negligence in failing to inform (plaintiff) about [those risks] [those alternatives] a direct cause of harm or injury to (plaintiff)?

\_\_\_\_\_

Yes or No
4.

Did (defendant) use reasonable care in deciding not to disclose the risks involved in the (specific procedure, operation, or treatment) and about the alternatives to that (specific procedure, operation, or treatment)?

\_\_\_\_\_

Yes or No

[List damages question(s) appropriate to the case involved.]

USE NOTE

The questions in this special verdict form correspond with the following jury instructions:

1. CIVJIG 80.25: Informed Consent.
2. CIVJIG 80.25: Informed Consent.
3. CIVJIG 27.10: Direct Cause.
4. CIVJIG 80.25: Informed Consent.

This special verdict form may also be modified and used in cases involving claims that a physician failed to advise a patient that he or she did not specialize in the course of treatment prescribed.

Some courts choose to instruct the jury to not answer the damages questions if there was a finding of no negligence or causation. An appropriate instruction in this situation would read: "If you answered no to questions 1 or 2, do not answer the following questions. Stop here. Your verdict is complete." One rationale for not requiring answers to the damages questions in cases of no liability is that the plaintiff in a medical malpractice case, unlike the standard personal injury plaintiff, typically suffers from some injurious disease or condition before the tortious conduct occurs. Requiring the jury to answer the damages questions creates a risk of a perverse verdict. *See, e.g., Fehling v. Levitan*, 382 N.W.2d 901 (Minn. Ct. App. 1986)), rev. denied (Minn. April 24, 1986).

CIVSVF 80.93

LOSS OF A CHANCE OF A MORE FAVORABLE OUTCOME

1. Was (defendant) negligent in (his/her) care and treatment of (plaintiff)?

\_\_\_\_\_

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Was (defendant)'s negligence in providing that care and treatment a direct cause of a reduction in (name of plaintiff)'s chances of a more favorable outcome?

\_\_\_\_\_

Yes or No

3. *If your answer to Question 2 was "Yes," then answer the following questions:*

a. State the percentage of (decedent)'s chance of (more favorable outcome) before (defendant's) negligence.

\_\_\_\_\_ %

b. State the percentage of (decedent)'s chance of (more favorable outcome) after (defendant's) negligent care and treatment.

\_\_\_\_\_ %

*Answer the following questions only if you answered "Yes" to Question 2 and you also answered Question 3:*

4. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the loss of (describe the more favorable outcome) up to the time of this verdict for:

- a. [Mental distress] \$ \_\_\_\_\_
- b. Past wage loss \$ \_\_\_\_\_
- c. Past healthcare expenses \$ \_\_\_\_\_

5. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by (describe the more favorable outcome) for:

- a. [Future mental distress] \$ \_\_\_\_\_
- b. Loss of future earning capacity

c. Future healthcare expenses

\$ \_\_\_\_\_

\$ \_\_\_\_\_

---

### USE NOTE

The “mental distress” questions are bracketed to highlight the desirability of more specifically tailoring the emotional distress for which recovery is sought to the facts of the case. The jury instructions covering damages for emotional harm list several factors to consider, including pain, disability, disfigurement, embarrassment, and emotional distress. In cases involving loss of a chance of a more favorable outcome, the emotional harm may consist of a person’s knowledge that his life expectancy has been diminished. The jury instructions on mental and emotional harm should reflect that claim.

The special verdict questions and their supporting jury instructions are as follows:

1. CIVJIG 80.10: Duty of a Doctor, Dentist, or Healthcare Provider
2. CIVJIG 27.10: Direct Cause
3. CIVJIG 80.11: Loss of a Chance
- 4a. CIVJIG 91.10: Items of Personal Damage—Past Damages—Bodily and Mental Harm
- 4b. CIVJIG: 91.15: Items of Personal Damage—Past Damages—Medical Supplies, Hospital and Medical Expense
- 4c. CIVJIG 91.20: Items of Personal Damage—Past Damages—Loss of Earnings
- 5a. CIVJIG 91.25: Items of Personal Damage—Future Damages—Bodily and Mental Harm
- 5b. CIVJIG 91.30: Items of Personal Damage—Future Damages—Medical Supplies, Hospital and Medical Expense
- 5c. CIVJIG 91.35: Items of Personal Damage—Future Damages—Loss of Earning Capacity



## CIVSVF 80.94

LOSS OF A CHANCE OF A MORE FAVORABLE  
OUTCOME AS AN ALTERNATIVE THEORY

1. Was (name of defendant) negligent in (his) (her) care and treatment of (plaintiff)?

\_\_\_\_\_  
Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:*  
Was (name of defendant)'s negligence in providing that care and treatment a direct cause of harm or injury to (plaintiff)?

\_\_\_\_\_  
Yes or No

3. *If your answer to Question 2 was "No," then answer this question:*  
Was (name of defendant)'s negligence in providing that care and treatment a direct cause of a reduction in (name of plaintiff)'s chances of a more favorable outcome?

\_\_\_\_\_  
Yes or No

4. *If your answer to Question 3 was "Yes," then answer the following question:*  
By what percentage was (name of plaintiff)'s chance of a more favorable outcome reduced by (name of defendant)'s negligence?

\_\_\_\_\_%

a. State the percentage of (name of decedent)'s chance of (more favorable outcome) before (defendant's) negligence.

\_\_\_\_\_%

b. State the percentage of (name of decedent)'s chance of (more favorable outcome) after (defendant's) negligence.

\_\_\_\_\_%

*Answer the following questions only if you answered "Yes" to Question 2 or "Yes" to Question 3 and you also answered Question 4:*

5. What amount of money will fairly and adequately compensate (plaintiff) for damages directly caused by the loss of (describe the more favorable outcome) up to the time of this verdict for:

a. [Mental distress]

\$\_\_\_\_\_

- b. Past wage loss \$ \_\_\_\_\_
- c. Past healthcare expenses \$ \_\_\_\_\_
6. What amount of money will fairly and adequately compensate (plaintiff) for damages reasonably certain to occur in the future, directly caused by (describe the more favorable outcome) for:
- a. [Future mental distress] \$ \_\_\_\_\_
- b. Loss of future earning capacity \$ \_\_\_\_\_
- c. Future healthcare expenses \$ \_\_\_\_\_

---

### USE NOTE

The “mental distress” questions are bracketed to highlight the desirability of more specifically tailoring the emotional distress for which recovery is sought to the facts of the case. The jury instructions covering damages for emotional harm list several factors to consider, including pain, disability, disfigurement, embarrassment, and emotional distress. In cases involving of a more favorable outcome, the emotional harm may consist of a person’s knowledge that his life expectancy has been diminished. The jury instructions on mental and emotional harm should reflect that claim.

**Caveat:** the Committee takes no position on whether the loss of a chance theory adopted by the Court in *Dickhoff v. Green*, 836 N.W.2d 321 (Minn. 2012), applies where the loss of a chance is asserted as an alternative theory of recovery.

The special verdict questions and their supporting jury instructions are as follows:

1. CIVJIG 80.10: Duty of a Doctor, Dentist, or Healthcare Provider
2. CIVJIG 27.10: Direct Cause
3. CIVJIG 27.10: Direct Cause
4. CIVJIG 80.11: Loss of a Chance
- 5a. CIVJIG 91.10: Items of Personal Damage—Past Damages—Bodily and Mental Harm

- 5b. CIVJIG: 91.15: Items of Personal Damage—Past Damages—Medical Supplies, Hospital and Medical Expense
- 5c. CIVJIG 91.20: Items of Personal Damage—Past Damages—Loss of Earnings
- 6a. CIVJIG 91.25: Items of Personal Damage—Future Damages—Bodily and Mental Harm
- 6b. CIVJIG 91.30: Items of Personal Damage—Future Damages—Medical Supplies, Hospital and Medical Expense
- 6c. CIVJIG 91.35: Items of Personal Damage—Future Damages—Loss of Earning Capacity

## CIVSVF 80.95

## WRONGFUL DEATH—LOSS OF A CHANCE

1. Was (name of defendant) negligent in (his) (her) care and treatment of (decedent)?

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Was (name of defendant)'s negligence in providing that care and treatment a direct cause of a reduction in (name of decedent)'s chances of (more favorable outcome)?

---

Yes or No

3. *If your answer to Question 2 was "Yes," then answer the following questions:* By what percentage was (name of decedent)'s chance of (more favorable outcome) reduced by (name of defendant)'s negligence?

- a. State the percentage of (name of decedent)'s chance of (more favorable outcome) before (defendant's) negligence.

\_\_\_\_\_ %

- b. State the percentage of (name of decedent)'s chance of (more favorable outcome) after (defendant's) negligent care and treatment.

\_\_\_\_\_ %

*Answer the following questions only if you answered "Yes" to Question 2 and also answered Question 3:*

4. What sum of money will fairly and adequately compensate (claimant)(s) for the losses (he) (she) (they) suffered from the date of (decedent's) death up to the date of this verdict as a result of this death?



\$ \_\_\_\_\_

5. What amount of money will fairly and adequately compensate (claimant)(s) for losses they are reasonably certain to suffer in the future as a result of (decedent's) death?

\$ \_\_\_\_\_

---

### USE NOTE

This verdict form is intended for use in wrongful death loss of a chance cases.

**Caveat:** the Committee takes no position on whether the loss of a chance theory adopted by the Court in *Dickhoff v. Green*, 836 N.W.2d 321 (Minn. 2012), applies in wrongful death cases under M.S.A. § 573.02.

The special verdict questions and their supporting jury instructions are as follows:

1. CIVJIG 80.10: Duty of a Doctor, Dentist, or Healthcare Provider
2. CIVJIG 27.10: Direct Cause
3. CIVJIG 80.11: Loss of a Chance
4. CIVJIG 91.75: Measure of Damages—Wrongful Death
5. CIVJIG 91.75: Measure of Damages—Wrongful Death

## CIVSVF 80.96

WRONGFUL DEATH—LOSS OF A CHANCE AS AN  
ALTERNATIVE THEORY

1. Was (name of defendant) negligent in (his)  
(her) care and treatment of (decedent)? \_\_\_\_\_  
Yes or No
2. *If your answer to Question 1 was "Yes," then  
answer this question:* Was (name of  
defendant)'s negligence in providing that care  
and treatment a direct cause of (name of  
decedent)'s death? \_\_\_\_\_  
Yes or No
3. *If your answer to Question 2 was "No," then  
answer this question:* Was (name of  
defendant)'s negligence in providing that care  
and treatment a direct cause of a reduction in  
(name of decedent)'s chances of survival? \_\_\_\_\_  
Yes or No
4. *If your answer to Question 3 was "Yes," then  
answer the following questions:* By what per-  
centage was (name of decedent)'s chance of  
survival reduced by (name of defendant)'s  
negligence? \_\_\_\_\_ %
  - a. State the percentage of (name of  
decedent)'s chance of survival before  
(defendant's) negligence. \_\_\_\_\_ %
  - b. State the percentage of (name of  
decedent)'s chance of survival after  
(defendant's) negligent care and  
treatment. \_\_\_\_\_ %

*Answer the following questions only if you answered "Yes" to Question 2  
or "Yes" to Question 3 and you also answered Question 4:*

5. What sum of money will fairly and adequately  
compensate (claimant)(s) for the losses (he)  
(she) (they) suffered from the date of  
(decedent's) death up to the date of this  
verdict as a result of this death? \$ \_\_\_\_\_

6. What amount of money will fairly and adequately compensate (claimant)(s) for losses they are reasonably certain to suffer in the future as a result of (decedent's) death?

\$ \_\_\_\_\_

---

**USE NOTE**

This verdict form is intended for use in wrongful death cases where loss of a chance is an alternative theory.

**Caveat:** the Committee takes no position on whether the loss of a chance theory adopted by the Court in *Dickhoff v. Green*, 836 N.W.2d 321 (Minn. 2012), applies in wrongful death cases under M.S.A. § 573.02, or, if it does, whether loss of a chance can be asserted as an alternative theory.

The special verdict questions and their supporting jury instructions are as follows:

1. CIVJIG 80.10: Duty of a Doctor, Dentist, or Healthcare Provider
2. CIVJIG 27.10: Direct Cause
3. CIVJIG 27.10: Direct Cause
4. CIVJIG 80.11: Loss of a Chance
5. CIVJIG 91.75: Measure of Damages—Wrongful Death
6. CIVJIG 91.75: Measure of Damages—Wrongful Death

## CIVSVF 80.97

## LEGAL MALPRACTICE—CASE-IN-A-CASE

1. Was there an attorney-client relationship between (defendant) and (plaintiff)?

---

Yes or No

2. *If your answer to Question 1 was “Yes” then answer this question:* Was (defendant) negligent in (his) (her) representation of (plaintiff)?

---

Yes or No

3. [If your answer to Question 2 was “Yes” then answer this question: But for this negligence, would (plaintiff) have been successful in (his/her) lawsuit against (name of opposing party in the underlying case)?]

---

Yes or No

[List damages question(s) appropriate to the case involved.]

---

USE NOTE

The questions in this special verdict form correspond with the following jury instructions:

1. CIVJIG 80.64: Attorney-Client Relationship—No Express or Implied Contract.
2. CIVJIG 80.55: Duty of an Attorney.
3. CIVJIG 80.66: Legal Malpractice—Causation.



## CIVSVF 80.98

## LEGAL MALPRACTICE—TRANSACTIONAL

1. Was there an attorney-client relationship between (defendant) and (plaintiff)?  

---

Yes or No
2. *If your answer to Question 1 was “Yes” then answer this question: Was (defendant’s) failure to [e.g., file the application for the bank charter] negligent?*  

---

Yes or No
3. *If your answer to Question 2 was “Yes” then answer this question: But for the defendant’s negligence, would (plaintiff) [e.g., have been granted the bank charter/have obtained a more favorable result in the transaction than the result obtained]?*  

---

Yes or No

[List damages question(s) appropriate to the case involved.]

---

USE NOTE

This special verdict form is a sample of the type of form that can be used in legal malpractice actions in which the complained-of malpractice does not involve destruction of a cause of action. In *Jerry’s Enterprises, Inc. v. Larkin, Hoffman, Daly & Lindgren*, 711 N.W.2d 811 (Minn. 2006), the plaintiff alleged that the attorney had failed to identify a possible cloud on the title when reviewing closing documents. The court held that “in an action for legal malpractice arising out of representation in transactional matters, the fourth element of the cause of action is modified to require a plaintiff to show that, but for defendant’s conduct, the plaintiff would have obtained a more favorable result in the underlying transaction than the result obtained.” *Jerry’s Enterprises*, 711 N.W.2d at 819. The verdict form is based upon the fact situation in *Blue Water Corp. v. O’Toole*, 336 N.W.2d 279 (Minn. 1983). In that case, the plaintiffs alleged that the attorney they retained to help them get a bank charter had been negligent in failing to file the application on their behalf. The court ruled that the plaintiffs not only needed to prove the attorney was negligent, but must then establish “that, had the application been timely filed, the Commission would have granted them the bank charter.” 336 N.W.2d at 282. The verdict form should be modified to reflect the conduct in question in the transaction at issue.

The questions in this special verdict form correspond with the following jury instructions:

1. CIVJIG 80.64: Attorney-Client Relationship—No Express or Implied Contract.
2. CIVJIG 80.55: Duty of an Attorney.
3. CIVJIG 80.66: Attorney Malpractice—Causation.

## CATEGORY 85

### PROPERTY

---

#### *Table of Instructions*

#### TRESPASSERS AND ENTRANTS

- CIVJIG 85.10 Trespasser—Definition
- CIVJIG 85.13 Duty of Possessor to Trespasser—Injury Caused by Condition of the Premises
- CIVJIG 85.16 Duty of Possessor to Trespasser—Injury Caused by Owner's or Occupant's Activities
- CIVJIG 85.19 Injury to Trespassing Children—"Attractive Nuisance"
- CIVJIG 85.22 Definition of Entrant
- CIVJIG 85.25 Duty of Possessor and Entrant
- CIVJIG 85.31 Recreational Use

#### LANDLORD AND TENANT

- CIVJIG 85.40 Leased Premises—Latent Defect—Duty of Landlord
- CIVJIG 85.43 Leased Premises—Areas Controlled by Landlord
- CIVJIG 85.46 Leased Premises—Negligent Breach of Covenant to Repair
- CIVJIG 85.49 Leased Premises—Negligent Repair
- CIVJIG 85.50 Leased Premises—Uniform Building Code Violation
- CIVJIG 85.52 Leased Premises—Public Use
- CIVJIG 85.55 Abnormally Dangerous Activities

#### SIDEWALKS AND STREETS

- CIVJIG 85.60 Duty of Owner of Property Abutting Sidewalk
- CIVJIG 85.63 Sidewalks and Streets—Duty of Municipality
- CIVJIG 85.65 Municipality—Defective Streets or Sidewalks—Actual Knowledge or Constructive Notice

#### DUTIES OF OTHER PROPERTY OWNERS

- CIVJIG 85.70 Innkeeper's Duty

CIVJIG 85.75	Duty of Parking Ramp Operator
CIVJIG 85.80	Adverse Possession
CIVJIG 85.82	Slander of Title

---

## INTRODUCTORY NOTE

**Trespassers and Entrants.** The Minnesota Supreme Court established the basic obligation of a possessor of land in *Peterson v. Balach*, 294 Minn. 161, 199 N.W.2d 639 (1972). Following a national trend, the supreme court abolished the traditional distinctions between invitees and licensees in favor of a uniform duty of care owed to entrants on property. The court, however, preserved trespassers as a separate category. The duty owed by a possessor of land to entrants on land is a general duty of reasonable care, as influenced by various factors, including "the purpose for which the entrant enters the land (licensee or invitee); the foreseeability or possibility of harm; the possessor's duty to inspect, repair, or warn; reasonableness of inspection of repair; and opportunity and ease of repair or correction." 294 Minn. at 174, n.7, 199 N.W.2d at 648, n.7.

A person's status as an entrant on another's property does not mean that a possessor necessarily owes a duty to act for the protection of that person. In *Gilbertson v. Leininger*, 599 N.W.2d 127, 131-32 (Minn. 1999), the supreme court held that social hosts did not have a special relationship with a guest who suffered injuries that the hosts had no experience or training in treating, where the guest had no reasonable expectations that the hosts would protect her from injuring herself.

A trespasser is defined by the Restatement (Second) of Torts as "a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise." Restatement (Second) of Torts § 329 (1965). In a trespass case, the landowner generally owes no duty at all because "a possessor of land is not liable to trespassers for physical harm caused by his failure to exercise reasonable care to put the land in a condition reasonably safe for their reception, or to carry on his activities so as not to endanger them." *Sirek v. State*, 496 N.W.2d 807, 809 (Minn. 1993) (citing Restatement (Second) of Torts § 333 (1965)).

However, that rule is modified in important respects. The possessor owes trespassers a duty if there is a frequent trespass on a limited area that the possessor knows about, and the possessor has created a dangerous artificial condition that subjects trespassers to a risk of serious bodily harm or death they are not likely to discover. *Hanson v. Bailey*, 249 Minn. 495, 500, 83 N.W.2d 252, 257 (1957); Restatement (Second) of Torts §§ 333, 335 (1965).

Another significant exception to the general rule is to be found in



the Restatement (Second) of Torts § 336, which subjects a possessor of land to liability for injuries suffered by a trespasser as a result of the possessors' failure to exercise reasonable care in carrying out their activities, where they know or from facts known to them should know that the trespasser is or may be trespassing and fail to carry on their activities upon the land with reasonable care for the trespasser's safety. *See Doe v. Brainerd Int'l Raceway, Inc.*, 533 N.W.2d 617, 621 (Minn. 1995).

Finally, in cases involving injuries to child trespassers, a special negligence standard applies. The standard balances a variety of factors, including the nature of the dangerous condition created by the possessor, the possessor's knowledge that children will be exposed to the risk, the likelihood that they will comprehend the risk, and the benefit of keeping the property as is compared to the risk to the children. Restatement (Second) of Torts § 339 (1965); *Hughes v. Quarve & Anderson Co.*, 338 N.W.2d 422, 424 (Minn. 1983). The supreme court has strictly construed the requirement that a possessor of land know or have reason to know that children are likely to trespass where the dangerous condition is located. *Croaker v. Mackenhausen*, 592 N.W.2d 857, 861 (Minn. 1999).

A possessor may be engaged in an activity that results in the imposition of strict liability. However, the Minnesota Supreme Court has not yet settled on a consistent theory of strict liability to be imposed in cases involving abnormally dangerous activities. *See Mahowald v. Minnesota Gas Co.*, 344 N.W.2d 856, 861–862 (Minn. 1984). There is no jury instruction on the issue because the question of whether an activity is abnormally dangerous is always a question of law for the court to answer. *See CIVJIG 85.55.*

**Landlord and Tenant.** Landlords are subject to a different set of rules than possessors of land. Minnesota follows the general common law rule that landlords generally do not owe a duty of care to tenants for damages that are caused by defective conditions on the leased premises, although there are several exceptions to the common law rule. *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002). Although a landlord is not an insurer of the safe condition of the leased premises, *see Hill v. Gaertner*, 253 Minn. 457, 459, 92 N.W.2d 810, 812 (1958); *Nubbe v. Hardy Continental Hotel System of Minnesota*, 225 Minn. 496, 499, 31 N.W.2d 332, 334 (1948), when the landlord reserves possession and control over a portion of the premises for the common use of his tenants, he is under a duty to exercise ordinary care to keep the reserved portion in a reasonably safe condition for the use of his tenants and their visitors. *See Strong v. Shefveland*, 249 Minn. 59, 63–65, 81 N.W.2d 247, 250–251 (1957); *Standafer v. First Nat'l Bank*, 243 Minn. 442, 446, 68 N.W.2d 362, 365 (1955); *Swenson v. Slawik*, 236 Minn. 403, 408, 53 N.W.2d 107, 110 (1952); *Iverson v. Quam*, 226 Minn. 290, 295, 32 N.W.2d 596, 600 (1948); *Nubbe v. Hardy Continental Hotel System of Minnesota*, 225 Minn. 496, 499, 31 N.W.2d 332, 334 (1948); *Restate-*

ment (Second) of Torts § 360 (1965). The duty of reasonable care is a continuing one throughout the period of common use by the tenants and necessarily encompasses an obligation to make reasonable inspections from time to time. See *Graeber v. Anderson*, 237 Minn. 20, 26–27, 53 N.W.2d 642, 646, (1952); *Nubbe v. Hardy Continental Hotel System of Minnesota*, 225 Minn. 496, 499, 31 N.W.2d 332, 334 (1948).

The general rule is that a landlord who has not agreed to repair the leased premises and is not guilty of any fraud or concealment as to their condition is not liable to his tenant or to any person entering under the tenant's right or invitation for injuries sustained as the result of an *obvious* defect. See *Wood v. Prudential Ins. Co. of America*, 212 Minn. 551, 4 N.W.2d 617 (1942); *Meyer v. Parkin*, 350 N.W.2d 435, 437 (Minn. Ct. App. 1984).

If defects are not obvious at the time of leasing, the landlord is liable for injuries sustained by the tenant or his licensees as a result of the defect, where the landlord knew of the danger or had information that would lead a reasonably prudent person to suspect the danger, and where the tenant exercising due care would not discover it. *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002); *Johnson v. O'Brien*, 258 Minn. 502, 506, 105 N.W.2d 244, 247 (1960); *Broughton v. Maes*, 378 N.W.2d 134, 136 (Minn. Ct. App. 1985). In such a case, the landlord has a duty to at least disclose such knowledge or information to the tenant. See 378 N.W.2d at 136. In *Johnson v. O'Brien*, the supreme court affirmed its decision in *Breimhorst v. Beckman*, 227 Minn. 409, 35 N.W.2d 719 (1949) that the liability of the landlord is not limited to those cases where the landlord has actual knowledge of the defect, and overruled decisions such as *Keegan v. G. Heilman Brewing Co.*, 129 Minn. 496, 152 N.W. 877 (1915), and *Ames v. Brandvold*, 119 Minn. 521, 138 N.W. 786 (1912). *Johnson* and *Breimhorst* are consistent with Restatement (Second) of Torts § 358 (1965).

In general, a landlord will not owe a duty to others to guard against the criminal misconduct of a third person. A landlord, however, may under certain circumstances assume such a duty. See *Nickelson v. Mall of America Co.*, 593 N.W.2d 723, 726 (Minn. Ct. App. 1999).

In *Gradjelick v. Hance*, 646 N.W.2d 225 (Minn. 2002), the supreme court clarified the impact of its opinion in *Bills v. Willow Run I Apartments*, 547 N.W.2d 693 (Minn. 1996), which concerned the impact of a Uniform Building Code violation on a negligence claim. The court held that its decision in *Bills*, which established a negligence *per se* standard for Uniform Building Code violations, was not intended to limit the availability of common law negligence claims against landlords, including claims based on hidden dangerous conditions:

(1) *Bills* articulated a standard for negligence *per se* based on UBC violations; (2) *Bills* did not create a unified standard such that allegations of code violation must be analyzed only under negligence *per se*; and (3) analyses under negligence *per se* according to *Bills*



and ordinary common law negligence are both available in landlord liability cases when UBC violations are alleged.

646 N.W.2d at 234.

Earlier in its opinion the court noted the relationship between common law negligence claims based on hidden dangerous conditions and UBC violations:

Actual or constructive knowledge of code violations is a required element of a negligence per se claim for UBC violations under *Bills*, but actual or constructive knowledge of *code violations* is not a required element in an ordinary negligence claim. Under the hidden dangerous condition exception to the general standard of landlord liability . . . , plaintiffs are required to show a landlord's actual or constructive knowledge of a *hidden dangerous condition*. Such hidden dangerous conditions may include, but are not limited to, code violations; therefore, the district court was in error when it stated that the Hances' actual or constructive knowledge of a *code violation* was a "crucial element" of the Gradjelick's claim under Minnesota law.

646 N.W.2d at 233.

A lessor is obligated to exercise reasonable care to perform a covenant to repair a dangerous condition on the premises. *See Saturnini v. Rosenblum*, 217 Minn. 147, 152, 14 N.W.2d 108, 111 (1944); *Barron v. Liedloff*, 95 Minn. 474, 475-476, 104 N.W. 289, 290 (1905).

The Restatement (Second) of Torts § 362 (1965) creates an additional exception for repairs:

A lessor of land who, by purporting to make repairs on the land while it is in the possession of the lessee, or by the negligent manner in which he makes such repairs has, as the lessee neither knows nor should know, made the land more dangerous for use or given it a deceptive appearance of safety, is subject to liability for physical harm caused by the condition to the lessee or to others upon the land with the consent of the lessee or sublessee.

The exception noted in section 362 has been recognized by the Minnesota Supreme Court. *See Wood v. Prudential Ins. Co. of America*, 212 Minn. 551, 556-557, 4 N.W.2d 617, 620 (1942).

The Minnesota Supreme Court indicated approval of the public use exception as established by Restatement (Second) of Torts § 359 (1965), in *Torwick v. Lisle*, 268 Minn. 197, 198, 128 N.W.2d 330, 332 (1964).

In *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 674 (Minn. 2001), the supreme court held that the landlord-tenant relationship was

not a special relationship that gave rise to a duty to protect against the criminal misconduct of third persons in the context of a claim that an apartment security system failed, leading to an attack on and death of the decedent tenant. The court also declined to adopt a rule that would impose liability on a landlord for failing to maintaining a security system:

We are not inclined to establish a rule that would discourage landlords from improving security. Transforming a landlord's gratuitous provision of security measures into a duty to maintain those measures and subjecting the landlord to liability for all harm occasioned by a failure to maintain that security would tend to discourage landlords from instituting security measures for fear of being held liable for the actions of a criminal.

632 N.W.2d at 675. *See also Bigos v. Kluender*, 611 N.W.2d 816, 821–22 (Minn. Ct. App. 2000), rev. denied (Minn. July 25, 2000) (landlord owed no duty to tenant to warn tenant of fire hazard created by tenant's use of grilling material on an apartment deck in violation of a fire code provision).

**Sidewalks and Streets.** It is the duty of the municipality, rather than the abutting owner, to maintain sidewalks and other public ways in a safe condition for the travel of pedestrians. Ordinances requiring abutting owners or occupants to build or keep the sidewalks in proper repair do not exonerate the city from its obligation; they merely delegate the duty to such persons as agents of the municipality. *Donald v. Moses*, 254 Minn. 186, 195, 94 N.W.2d 255, 261 (1959); *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 521, 83 N.W.2d 96, 101 (1957).

The owner of property abutting a sidewalk does not owe a duty to the public to keep the sidewalk in a reasonably safe condition for travel. *See Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 519–20, 83 N.W.2d 96, 100 (1957). The owner has no duty to remove dangerous objects, obstructions, or nuisances from the sidewalk. *See id.* However, an adjoining landowner has a duty not to act so as to create hazards on public sidewalks. *See Sand v. Little Falls*, 237 Minn. 233, 237–38, 55 N.W.2d 49, 51–52 (1952); *Shepstedt v. Hayes*, 221 Minn. 74, 78–79, 21 N.W.2d 199, 201–02 (1945). For example, the abutting owner is not liable for injuries suffered as a result of slipping and falling on a sidewalk that has become slippery and dangerous from *natural* accumulations of ice and snow, *see Graalum v. Radisson Ramp, Inc.*, 245 Minn. 54, 59–60, 71 N.W.2d 904, 908 (1955); or where dangerous conditions are created by the normal flow of vehicular traffic, *see McDonough v. St. Paul*, 179 Minn. 553, 556, 230 N.W. 89, 90 (1930); *Olson v. St. James*, 380 N.W.2d 555, 560 (Minn. Ct. App. 1986). But where the abutting owner uses or maintains his property in a manner that *artificially* causes dangerous ice to form on the sidewalk, the owner may be liable for injuries suffered by a pedestrian falling on the sidewalk. *See id.* However, absent actual or constructive notice of the defect, the landowner is not liable. *See Bergum v. Palmborg*, 240 Minn. 122, 127, 60 N.W.2d 71, 73 (1953).



An owner of property who is responsible for defective conditions existing on a sidewalk adjacent to his property is not necessarily relieved of liability merely by leasing the premises. For example, if a facility is maintained on the owner's property for the convenience of the owner's building, and the facility is permitted to become defective and dangerous, the owner may be liable for injuries suffered by a pedestrian as a result of the defective condition, even though the adjacent property is occupied by a tenant. *Shepsted v. Hayes*, 221 Minn. 74, 79, 21 N.W.2d 199, 201-02 (1945). A tenant also may be held liable under circumstances where the tenant maintained the dangerous condition created by the owner. Control is the essential factor. See *Scott v. Olivia*, 260 Minn. 346, 353, 110 N.W.2d 21, 26-27 (1961).

The Minnesota Supreme Court has also recognized that an abutting owner has the duty of exercising reasonable care in conducting activities upon his property, so that the acts committed upon the property will not expose a member of the public to the risk of bodily harm while passing by on the sidewalk. *Connolly v. Nicollet Hotel*, 254 Minn. 373, 386-87, 95 N.W.2d 657, 667 (1959).

In 1986, the legislature revised M.S.A. § 466.03, subd. 4, to expand municipal immunity to include claims "based on snow or ice conditions on any highway or public sidewalk that does not abut a publicly-owned building or publicly-owned parking lot." Prior to the amendment the statute provided immunity for claims "based on snow or ice conditions on any highway or other public place." The plaintiffs in *Brandenburg v. Minnehaha Warehouse Liquors*, 1996 WL 250556 (Minn. Ct. App. 1996), argued that the expanded city immunity for claims based on snow or ice conditions on sidewalks meant that abutting landlords are now liable for failure to maintain their sidewalks. Based on *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 83 N.W.2d 96 (1957), the plaintiffs argued that the reason for the prior failure to impose a duty on landowners to maintain sidewalks was that doing so would be an improper delegation of the city's responsibility. Because the city no longer has that duty, they argued that the defendant/property owner should be responsible for ice and snow conditions. The court of appeals rejected the argument:

*Sternitzke* did not hold that an abutting landowner has no duty to maintain a city sidewalk because the city cannot delegate its duty; *Sternitzke* simply recognized the long-existing common law rule that an abutting landowner has no duty and held that a city ordinance that required a business owner to clear ice and snow from the public sidewalk did not create a duty owed to individual pedestrians . . . .

Because the common law rule that an abutting landowner owes no duty to sidewalk users is not dependent on the existence of municipal liability, we are not persuaded that granting cities immunity for claims based on snow or ice conditions on sidewalks automatically imposed on abutting landowners a duty that did not previously exist.

1996 WL 250556 at 2. The plaintiffs also argued that the heavy use of the sidewalk made it an extraordinary use of the sidewalk. Although there is an exception from the general rule of nonliability of an abutting landowner for extraordinary uses, the court of appeals held that the use was not so heavy that it ceased "to perform its normal function as a reasonably safe route for pedestrian travel." 1996 WL 250556 at 3.

In *Doyle v. City of Roseville*, 524 N.W.2d 461 (Minn. 1994), the plaintiff was injured when she slipped and fell on ice in the Roseville Ice Arena parking lot. Distinguishing *Bufkin v. City of Duluth*, 291 N.W.2d 225 (Minn. 1980), which imposed liability on a city and administrative board for a slip and fall on a parking lot of an auditorium run for profit, the supreme court held that the "mere slipperiness" rule, which was settled law prior to the adoption of the Municipal Tort Liability Act, continues to be good law. The court noted that under that rule "[a] municipality has never been held liable for injuries sustained in a fall on newly formed glare ice although a municipality is liable if it negligently permits an accumulation of ice and snow to remain on a sidewalk for such a period of time that slippery and dangerous ridges, hummocks, depressions, and other irregularities develop there." 524 N.W.2d at 463; see also *Otis v. Anoka-Hennepin School District No. 11*, 611 N.W.2d 390, 392-93 (Minn. App. 2000). The court noted that it had not repudiated the rule in *Bufkin*, but merely declined to apply it in a case where the municipality operated the auditorium at a profit and had the opportunity to correct the dangerous condition.

In *Doyle*, the court saw no reason to deviate from the "mere slipperiness" rule, and held that the city was entitled to summary judgment. It was unnecessary for the court to consider the issue of immunity under M.S.A. § 466.03 (1992). 524 N.W.2d at 463.

A municipality owes a duty to the public to exercise reasonable care to keep its streets and sidewalks in a reasonably safe condition for pedestrians using them. See *Hansen v. St. Paul*, 298 Minn. 205, 207, 214 N.W.2d 346, 348 (1974); *Bury v. Minneapolis*, 258 Minn. 49, 51, 102 N.W.2d 706, 708 (1960); *Hall v. Anoka*, 256 Minn. 134, 136, 97 N.W.2d 380, 382 (1959). The obligation to repair and maintain public sidewalks is the primary duty of the municipality. The duty cannot be shifted to the abutting occupant or property owner. *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 519-20, 83 N.W.2d 96, 100 (1957). Even an ordinance requiring the abutting occupant or owner to build or keep the sidewalks in proper repair does not exonerate the municipality from its obligation; it merely delegates the duty to such persons as agents of the municipality. See *Donald v. Moses*, 254 Minn. 186, 192, 94 N.W.2d 255, 262 (1959); *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 522, 83 N.W.2d 96, 102 (1957). The abutting owner is not liable for any defect in the sidewalk unless created by the owner, the owner's agents, or servants. See *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 522-23, 83 N.W.2d 96, 101-02 (1957); *Freeman v. Minneapolis*, 219 Minn. 202, 207-08, 17 N.W.2d 364, 367 (1945). Regardless of the defect or dangerous condition complained of, or its source, the municipality cannot be



held liable unless it had actual or constructive notice of the defect or dangerous condition, and had sufficient time prior to the accident to have made proper repairs or otherwise to have protected the public. See *Fuller v. Mankato*, 248 Minn. 342, 345, 80 N.W.2d 9, 11 (1956); *Johnson v. Nicollet County*, 387 N.W.2d 209, 212 (Minn. Ct. App. 1986).

A municipality is not an insurer of the safe condition of its streets. See *Baker v. City So. St. Paul*, 198 Minn. 437, 442, 270 N.W. 154, 156 (1936); *Heidemann v. Sleepy Eye*, 195 Minn. 611, 613, 264 N.W. 212, 213 (1935). It may be held liable only if the defect in question is of such a nature that a reasonably prudent person in the exercise of due care might reasonably have anticipated the danger. See *Brittain v. Minneapolis*, 250 Minn. 376, 387, 84 N.W.2d 646, 654 (1957).

The duty to exercise reasonable care is commensurate with the risks and dangers involved. See *Barrett v. Virginia*, 179 Minn. 118, 119, 228 N.W. 350, 350 (1929); *Bieber v. St. Paul*, 87 Minn. 35, 37, 91 N.W. 20, 21 (1902). Thus, a municipality is not charged with responsibility for every mere inequality or irregularity in the surface of the sidewalk. See *Brittain v. Minneapolis*, 250 Minn. 376, 387, 84 N.W.2d 646, 654 (1957). It need only prepare for and anticipate ordinary use, not extraordinary and unanticipated use. See *Rudd v. Bovey*, 252 Minn. 151, 154, 89 N.W.2d 689, 691 (1958); *Tracey v. Minneapolis*, 185 Minn. 380, 382, 241 N.W. 390, 391 (1932).

The municipality's duty is not limited to structural defects. While not generally liable for injuries sustained because of mere slipperiness of its sidewalks, it may be held liable for dangerous accumulations of snow and ice. *Lockway v. Proulx*, 283 Minn. 30, 32, 166 N.W.2d 79, 80 (1969); *Bury v. Minneapolis*, 258 Minn. 49, 51, 102 N.W.2d 706, 708 (1960); *Larson v. Mankato*, 239 Minn. 484, 485-86, 59 N.W.2d 312, 313 (1953); *Squillace v. Mountain Iron*, 223 Minn. 8, 14-15, 26 N.W.2d 197, 202 (1946). The duty may also include protection from falling objects. See *Heidemann v. Sleepy Eye*, 195 Minn. 611, 613, 264 N.W. 212, 213 (1935).

The municipality's duty applies to crosswalks, see *Hall v. City of Anoka*, 256 Minn. 134, 135-36, 97 N.W.2d 380, 382 (1958), and to street curbs. See *Kimball v. Chicago, St. P., M. & O. Ry. Co.*, 128 Minn. 95, 99, 150 N.W. 379, 380 (1914). The municipality is generally under no duty to render the area outside of a public street safe for travel. See *Briglia v. St. Paul*, 134 Minn. 97, 99, 158 N.W. 794, 796 (1916). Where the condition of the sidewalk necessitates use by pedestrians of the adjoining street, the municipality is obligated to exercise the same degree of care with reference to the street as it must with reference to the sidewalk. *Squillace v. Mountain Iron*, 223 Minn. 8, 16-17, 26 N.W.2d 197, 203 (1946); *Thoorsell v. Virginia*, 138 Minn. 55, 58, 163 N.W. 976, 976 (1917). Absent such necessity, if the accident occurs upon the immediate adjacent boulevard or driveway area, the municipality's standard of care is less than what it would be had the accident happened on the sidewalk, and the pedestrian's standard of care is commensurately

higher. See *Brittain v. Minneapolis*, 250 Minn. 376, 387, 84 N.W.2d 646, 654 (1957).

Where the defective or otherwise dangerous condition of the sidewalk is a result of the negligence of the adjoining landowner, and the municipality had sufficient actual or constructive notice to have had an opportunity to remedy the condition, the municipality, as well as the negligent landowner, will be held liable. See *Callahan v. Virginia*, 230 Minn. 55, 58, 40 N.W.2d 841, 842-43 (1950); *Squillace v. Mountain Iron*, 223 Minn. 8, 16, 26 N.W.2d 197, 202-03 (1946); *Nichols v. Buhl*, 152 Minn. 494, 496-97, 193 N.W. 28, 29 (1922). For the adjoining landowner's duty, see CIVJIG 85.60.

A municipality cannot be held liable for injuries suffered as a result of a defect or dangerous condition existing on a municipal street or sidewalk, unless the municipality had actual or constructive notice of the defect or dangerous condition and sufficient time prior to the accident to have made proper repairs or otherwise protect the public. *Smith v. Hibbing*, 272 Minn. 1, 3, 136 N.W.2d 609, 610 (1965); *Fuller v. Mankato*, 248 Minn. 342, 345, 80 N.W.2d 9, 11 (1956). A municipality will be deemed to have received constructive notice where the defective condition has continued for such a period of time that the municipality is bound to take notice of its condition. *Ljungberg v. North Mankato*, 87 Minn. 484, 485-86, 92 N.W. 401, 402 (1902). In determining constructive notice, the trier of fact may also consider the nature of the defect and extent to which the area in question is used. See 87 Minn. at 485-86, 92 N.W. at 402.

**Possessor of Land.** The Minnesota appellate courts have utilized the factual approach recommended by the Restatement (Second) of Torts § 328E (1965), to resolve the issue of whether a person is a possessor of land. *Isler v. Burman*, 305 Minn. 288, 293-94, 232 N.W.2d 818, 821 (1975); *Ironwood Springs Christian Ranch, Inc. v. Walk to Emmaus*, 801 N.W.2d 193, 198 (Minn. Ct. App. 2011).

Section 328E defines a possessor of land as:

(a) a person who is in occupation of the land with intent to control it or

(b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or

(c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b).

In *Isler*, the minor plaintiff was injured in a snowmobile accident during a church youth party on property the church was using with the owner's permission. One of the issues was whether the church was a



possessor of land for purposes of determining the church's duty to the plaintiff.

The *Isler* court found section 328E, comment a, helpful in resolving the possession issue:

a. "Possession" has been given various meanings in the law, and the term frequently is used to denote the legal relations resulting from facts, rather than in the sense of describing the facts themselves. It is used here strictly in the factual sense, because it has been so used in almost all tort cases.

*Isler v. Burman*, 305 Minn. 288, 293–94, 232 N.W.2d 818, 821 (1975), quoting Restatement (Second) of Torts § 328E cmt. a. The comment also notes that "[t]he important thing in the law of torts is the possession, and not whether it is or is not rightful as between the possessor and some third person."

The *Isler* court also applied sections 383 and 387 of the Restatement in determining that the church was a possessor of land. Restatement (Second) of Torts § 383 (1965), provides that:

One who does an act or carries on an activity upon land on behalf of the possessor is subject to the same liability, and enjoys the same freedom from liability, for physical harm caused thereby to others upon and outside of the land as though he were the possessor of the land.

Section 387 provides that:

An independent contractor or servant to whom the owner or possessor of land turns over the entire charge of the land is subject to the same liability for harm caused to others, upon or outside of the land, by his failure to exercise reasonable care to maintain the land in safe repair as though he were the possessor of the land.

In *Ironwood Springs Christian Ranch, Inc. v. Walk to Emmaus*, 801 N.W.2d 193, 198 (Minn. Ct. App. 2011), the Minnesota Court of Appeals applied the *Isler* analysis in concluding that the host of a weekend retreat was not a possessor of land because the owner and operator of the retreat center remained in control and because Emmaus, the weekend retreat host, did not occupy the land with intent to control it.

## TRESPASSERS AND ENTRANTS

## CIVJIG 85.10

## TRESPASSER—DEFINITION

## Definition of “trespasser”

A “trespasser” is a person who enters or stays on property in possession of another [without permission] [who enters or stays on a property with permission, but goes beyond the scope of permission].

Permission can be given directly or implied.

[In this case (plaintiff) is a trespasser.]

---

USE NOTE

If the status of a person entering the land of another is clear, the court should choose the applicable rule of law that governs the duty of the possessor of the property. However, where the status is unclear, the jury may appropriately be asked to determine the person’s status. In that event, the special verdict form should include a question concerning the person’s status. Under Minnesota law, the only important distinction is between trespassers and other entrants on land.

The bracketed language in the first sentence should be given only where there is an issue as to whether the person exceeded the scope of permission.

Where consent is a fact issue, the issue may be submitted to the jury in one of two ways. The special verdict question may be framed in terms of whether the person who owns or controls the property consented to the plaintiff’s presence, or the question may ask whether the plaintiff is a trespasser. Depending on the answer, the jury should then be instructed to answer the appropriate question based on the duty that is owed to the plaintiff, if there are still fact questions that must be answered, irrespective of the plaintiff’s status.

## AUTHORITIES

Although the distinction between invitees and licensees was abolished in *Peterson v. Balach*, 294 Minn. 161, 173–74, 199 N.W.2d 639, 647 (1972), the supreme court preserved the trespasser category. A

trespasser is defined by the Restatement, Second, Torts as “a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor’s consent or otherwise.” Restatement (Second) of Torts § 329 (1965). Privilege is a defense. For circumstances under which a privilege may be found to exist, *see* Restatement (Second) of Torts § 167 et seq. (1965). Trespass may exist even though there is no actual damage to the property. *Greenwood v. Evergreen Mines Co.*, 220 Minn. 296, 312, 19 N.W.2d 726, 734 (1945).

Any unauthorized entry upon the premises of another is a trespass. *Greenwood v. Evergreen Mines Co.*, 220 Minn. 296, 312, 19 N.W.2d 726, 734 (1945); *Whittaker v. Stangvick*, 100 Minn. 386, 389, 111 N.W. 295, 296 (1907); *Copeland v. Hubbard Broadcasting, Inc.*, 526 N.W.2d 402, 404 (Minn. Ct. App. 1995), rev. denied (Minn. Mar. 29, 1995), appeal after remand, *Copeland v. Hubbard Broadcasting, Inc.*, 1997 WL 729195 (Minn. Ct. App. 1997), rev. denied (Minn. Jan. 28, 1998). An entrant may become a trespasser by moving beyond the scope of the possessor’s invitation or permission. *See Rieger v. Zackoski*, 321 N.W.2d 16, 20 (Minn. 1982). One who is on the premises of another may also become a trespasser by refusing to leave when requested to do so. *Mitchell v. Mitchell*, 54 Minn. 301, 304, 55 N.W. 1134, 1135 (1893). Similarly, a tenant who holds over after termination of his lease, contrary to the landlord’s will, may be treated as a trespasser at the option of the landlord. *Schrunk v. Andres*, 221 Minn. 465, 470, 22 N.W.2d 548, 552 (1946). A trespass is not committed if there is consent to do the acts that were committed. Consent may be implied from the circumstances. *Meixner v. Buecksler*, 216 Minn. 586, 590, 13 N.W.2d 754, 756 (1944).

A person may be a trespasser, although the person has acted in good faith under the mistaken belief that no wrong has been committed. Restatement (Second) of Torts § 164 (1965).

It may be unclear whether a person is an entrant on property or a trespasser. Where the person’s status is clear, the court should choose the applicable rule of law that governs the duty of the possessor of the property. *See Reider v. City of Spring Lake Park*, 480 N.W.2d 662, 666–667 (Minn. Ct. App. 1992), rev. denied (Minn. April 13, 1992). However, where the status is unclear, the jury may appropriately be asked to determine the person’s status. *See Rieger v. Zackoski*, 321 N.W.2d 16, 20 (Minn. 1982).

### Research References

*West’s Key Number Digest*  
Negligence ⇨1045(2), 1734

*Legal Encyclopedias*  
C.J.S., Negligence §§ 399, 404 to 408, 871, 881 to 882, 885 to 887, 904 to 905



**CIVJIG 85.13****DUTY OF POSSESSOR TO TRESPASSER—INJURY  
CAUSED BY CONDITION OF THE PREMISES****Possessor's duty to warn a trespasser**

A possessor of property has a duty to use reasonable care to warn a trespasser of an artificial condition on the property if:

1. The possessor knows, or should know from facts already known, that trespassers regularly go on specific parts of the property where the injury happened, and
2. The possessor created or kept an artificial condition that the possessor knows is likely to cause death or serious injury, and
3. The possessor has reason to believe the trespasser will not discover the danger.

**Reasonable care**

Reasonable care is the care you would expect a reasonable person to use in the same or similar circumstances.

---

**USE NOTE**

This instruction should be used in cases involving injury to trespassers from artificial conditions on land. It applies in narrow circumstances where there is a frequent trespass on a limited area. In cases where the danger is obvious to the trespasser, there will be no duty.

It may not be that all parts of this instruction will be necessary. For example, only the question of whether the danger is obvious to trespassers may be in issue. If so, only the appropriate questions should be submitted to the jury on special verdict questions.

See CIVJIG 85.19 for the injury to trespassing children (attractive nuisance) instruction.

**AUTHORITIES**

Although the distinction between invitees and licensees was



abolished in *Peterson v. Balach*, 294 Minn. 161, 165, 199 N.W.2d 639, 642 (1972), the supreme court preserved the trespasser category. An owner or occupier of real property owes a trespasser no duty to maintain the premises in a safe condition, and, therefore, generally will not be held liable for injuries suffered by a trespasser resulting from a defect in the premises. See *Kieffer v. Wisconsin Ry. Light & Power Co.*, 137 Minn. 112, 114–15, 162 N.W. 1065, 1066 (1917); Restatement (Second) of Torts § 333 (1965); Dan B. Dobbs et al., *The Law of Torts* 2d § 273 (2011). The rule applies even though the trespass may have been unintentional. See *id.* A trespasser must take the premises as found. *Roadman v. C. E. Johnson Motor Sales*, 210 Minn. 59, 297 N.W. 166 (1941). There are, however, certain instances where the owner or occupant of property may incur a duty to protect the trespasser from harm resulting from the condition of the premises. One such instance is to be found in Restatement (Second) of Torts § 335 (1965), which is followed in Minnesota:

[Where the owner or occupant of the premises] \* \* \* knows, or from the facts within his knowledge should know, that trespassers constantly intrude upon a *limited* area thereof [and if he knows or reasonably ought to know of the likelihood of this intrusion, he] is subject to liability for bodily harm caused to them by an *artificial condition* thereon, if

(a) the condition

(i) is one which the possessor has created or maintains and

(ii) is, to his knowledge, likely to cause death or serious bodily harm to such trespassers and

(iii) is of such nature that he has reason to believe that such trespassers will not discover it and

(b) the possessor has failed to exercise reasonable care to warn such trespassers of the condition and the risk involved therein. (Emphasis supplied)

*Hanson v. Bailey*, 249 Minn. 495, 500, 83 N.W.2d 252, 257 (1957). See Restatement (Second) of Torts §§ 333, 335 (1965); Dan B. Dobbs et al., *The Law of Torts* 2d § 273 (2011). There is no duty to warn where the trespasser is aware of the obviously dangerous artificial conditions on the property. See *Watters v. Buckbee Mears Co.*, 354 N.W.2d 848, 850–851 (Minn. Ct. App. 1984).

In *Hanson v. Bailey*, the supreme court pointed out that:

The term “limited” is used not in the sense of “small” or as necessarily referring only to a fractional part of the whole, but rather in the sense of a “delimited” or clearly defined area.

249 Minn. at 500–501, 83 N.W.2d at 257.

A second significant area in which the owner or occupant of property may have a duty to keep the premises safe for trespassers is where the trespasser is a child. See CIVJIG 85.19, Authorities. Where CIVJIG 85.19 is given, it is inappropriate to also instruct the jury on the standards applicable to adult trespassers. *Hughes v. Quarve & Anderson Co.*, 338 N.W.2d 422, 425 (Minn. 1983).

The duty owed to trespassers also exists when property is held open by a person for recreational use. See CIVJIG 85.31 and Authorities.

Under the standards set out in Restatement (Second) of Torts § 335 (1965), a landowner is liable only for failure to exercise reasonable care to warn trespassers about hidden, artificial dangers created or maintained by the landowner. The landowner does not have a duty to eliminate these conditions from the land in order to accommodate trespassers but only to give them adequate warning. A landowner is “entitled to assume trespassers will realize that no preparation has been made for their reception and will, therefore, be on the alert to observe the conditions which exist upon the land.” *Sirek v. State*, 496 N.W.2d 807, 810 (Minn. 1993), citing Restatement (Second) of Torts § 335 cmt. f. However, the landowner is not entitled to assume that trespassers will discover conditions that are unusual to land of the type on which the trespassers intrude or that are the result of careless maintenance of those conditions, if the conditions are not readily observable by a trespasser. 496 N.W.2d at 810.

### Research References

*West's Key Number Digest*  
Negligence ⇨1045, 1734

*Legal Encyclopedias*  
C.J.S., Negligence §§ 399, 404 to 431, 569, 871, 881 to 882, 885 to 887, 904 to 905

## CIVJIG 85.16

**DUTY OF POSSESSOR TO TRESPASSER—INJURY  
CAUSED BY OWNER'S OR OCCUPANT'S  
ACTIVITIES****Possessor's duty**

A possessor of property has a duty to:

1. Use reasonable care for the safety of the trespasser while carrying on the possessor's activities, or
2. Use reasonable care to warn the trespasser of the danger or risk involved in the possessor's activities, if the possessor has reason to know of the presence of the trespasser.

**Reasonable care**

Reasonable care is the care you would expect a reasonable person to use in the same or similar circumstances.

---

**USE NOTE**

This instruction should be used in cases where the trespasser is injured by the possessor's activities on his or her property.

**AUTHORITIES**

The general rule is that a possessor of land is not liable for injuries to trespassers caused by his failure to carry on activities so as not to endanger them. *Doe v. Brainerd Int'l Raceway, Inc.*, 533 N.W.2d 617, 621 (Minn. 1995), citing *Hanson v. Bailey*, 249 Minn. 495, 500, 83 N.W.2d 252, 257 (1957). Where the possessor of land engages in dangerous activities on his property and knows, or should know, that trespassers frequently intrude upon a limited area on his property, the possessor is under a duty to carry on dangerous activities with reasonable care for the safety of such trespassers, or to warn them of the dangers involved in those activities. *Gow v. Turnquist*, 474 N.W.2d 182, 184 (Minn. Ct. App. 1991), citing former Civil JIG 327 (3d ed. 1986) (now CIVJIG 85.16). Restatement (Second) of Torts § 334 (1965); *Mix v. Minneapolis*, 219 Minn. 389, 398–99, 18 N.W.2d 130, 135 (1945). In the *Hanson* case, the court, in interpreting the Restatement (Second) of Torts § 335, said that the term "limited area" is used in the sense of referring to a



delimited or clearly defined area, rather than to a small or fractional part of the whole. The same would hold true with respect to section 334.

Another significant exception to the general rule is to be found in the Restatement (Second) of Torts § 336, which subjects possessors of land to liability for injuries suffered by a trespasser as a result of the possessors' failure to exercise reasonable care in carrying out their activities, where they know or from facts known to them should know that the trespasser is or may be trespassing and fail to carry on their activities upon the land with reasonable care for the trespasser's safety. *See Doe v. Brainerd Int'l Raceway, Inc.*, 533 N.W.2d 617, 621 (Minn. 1995).

In Minnesota, there is no duty on the part of a possessor of land to exercise reasonable care to discover the presence of trespassers. *Denzer v. Great Northern Ry.*, 188 Minn. 580, 583, 248 N.W. 44, 45 (1933); *Anderson v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 103 Minn. 224, 114 N.W. 1123 (1908). The court in *Anderson* said that to allege that a possessor of land should have known of the presence of a trespasser is not enough to create a cause of action; the possessor must know of the trespasser's presence and then fail to exercise reasonable care. In *Anderson*, however, plaintiff's complaint tried to hold defendant to a duty of establishing a "lookout" or exercising due care in discovering a trespasser. This is different from creating a duty of due care to someone who, from the facts and circumstances already known to the possessor, should have been known to have been present as a trespasser. *See* Restatement (Second) of Torts § 336 (1965). For example, where the engineer of a train sees a pile of clothing on a track, the engineer would not be entitled to assume that it was not a person and proceed without caution. *See* Restatement (Second) of Torts § 336 cmt. b, illus. 1 (1965). To hold otherwise, keeping in mind that Minnesota has adopted the position set forth in the Restatement (Second) of Torts § 334, would mean that the landowner would have a lesser duty when, from facts within his knowledge, there is a reasonable certainty of the presence of trespassers than when there is no knowledge of facts that someone is in fact trespassing, but there is knowledge of constant trespassing on a limited area. The Committee feels that there is no such distinction and, therefore, has incorporated the rule of section 336 into CIVJIG 85.16.

The duty owed to trespassers also exists when property is held open by a person for recreational use. *See* CIVJIG 85.31 and Authorities.

#### Research References

*West's Key Number Digest*  
Negligence ⇨1045, 1734

*Legal Encyclopedias*  
C.J.S., Negligence §§ 399, 404 to 431, 569, 871, 881 to 882, 885 to 887, 904 to 905



**CIVJIG 85.19****INJURY TO TRESPASSING CHILDREN—  
“ATTRACTIVE NUISANCE”****Possessor’s duty to trespassing children**

A possessor of property who keeps a structure or other artificial condition on property that injures a trespassing child is negligent if:

1. The possessor knows, or has reason to know, children are likely to trespass on the property at the place where the condition exists, and
2. The possessor knows, or has reason to know, that this condition exists, and
3. The possessor realizes or should realize that this condition involves an unreasonable risk of death or serious injury to children, and
4. The children are too young at the time of the accident to understand the risk of playing with, or being near, the hazard or do not discover the condition, and
5. The benefits to the possessor of keeping the structure or artificial condition as it and the burden of eliminating it are slight compared with the risk to the children, and
6. The possessor does not use reasonable care to get rid of the danger or protect the children.

**Reasonable care**

“Reasonable care” is the care you would expect a reasonable person to use in the same or similar circumstances.

---

**USE NOTE**

This instruction applies to child trespassers. It is a question of law

for the court as to whether this standard or the standard applicable to adult trespassers applies.

### AUTHORITIES

The conventional "attractive nuisance" doctrine was discarded by the Minnesota Supreme Court in *Gimmestad v. Rose Bros. Co.*, 194 Minn. 531, 536, 261 N.W. 194, 196 (1935). See also *Hocking v. Duluth, M. & I. R. Ry.*, 263 Minn. 483, 489, 117 N.W.2d 304, 308 (1962); *Davies v. Land O'Lakes Racing Ass'n*, 244 Minn. 248, 253, 69 N.W.2d 642, 645 (1955). The idea of invitation, express or implied, is no longer a condition precedent to recovery. *Hocking v. Duluth, M. & I. R. Ry.*, 263 Minn. 483, 489, 117 N.W.2d 304, 308 (1962). Minnesota no longer recognizes a distinction between "attractive nuisance" cases and other negligence cases. *Slinker v. Wallner*, 258 Minn. 243, 247, 103 N.W.2d 377, 380 (1960); *Doren v. Northwestern Baptist Hosp. Ass'n*, 240 Minn. 181, 186, 60 N.W.2d 361, 365 (1953).

The language of the instruction is substantially identical to that of Restatement (Second) of Torts § 339 (1965), which was adopted by the Minnesota Supreme Court in *Gimmestad v. Rose Bros. Co.*, 194 Minn. 531, 536-537, 261 N.W. 194, 196 (1935) (predecessor to § 339), and has been adhered to by the court ever since. *E.g.*, *Croaker v. Mackenhausen*, 592 N.W.2d 857, 860 (Minn. 1999); *Hughes v. Quarve & Anderson Co.*, 338 N.W.2d 422, 424 (Minn. 1983); *Szyplinski v. Midwest Mobile Home Supply Co.*, 308 Minn. 152, 155, 241 N.W.2d 306, 309 (1976).

Restatement (Second) of Torts § 339, reads as follows:

A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if

(a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and

(b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and

(c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and

(d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight compared with the risk to children involved, and

(e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

Restatement (Second) of Torts § 339 (1965) imposes a significantly higher duty on landowners than in cases where an adult trespasser is involved. "In some cases, it actually imposes a duty on landowners to reconfigure their land, rather than simply to warn children." *Sirek v. State*, 496 N.W.2d 807, 810 (Minn. 1993).

In order for section 339 to apply, the possessor must know or have reason to know that the children are trespassing at the place where the dangerous condition exists. *Croaker v. Mackenhausen*, 592 N.W.2d 857, 862 (Minn. 1999).

In cases where "small children are being watched by their parents, or entrusted persons in supervision, landowners may be relieved of a duty to warn them of or remove dangerous instrumentality [sic] the danger from which is apparent." 496 N.W.2d at 811, citing *Strode v. Becker*, 206 Ill.App.3d 398, 151 Ill.Dec. 420, 425, 564 N.E.2d 875, 880 (1990).

Also, "if a child is too young chronologically or mentally to be' at large, 'the duty to supervise that child as to obvious risks lies primarily with the accompanying parent.'" *Sirek*, 496 N.W.2d at 811, citing *Salinas v. Chicago Park Dist.*, 189 Ill.App.3d 55, 136 Ill.Dec. 660, 664, 545 N.E.2d 184, 188 (1989).

Entrants onto state park land are legally treated as trespassers pursuant to M.S.A. § 3.376, subd. 3h. The supreme court has held that in cases involving injuries to children, the adult trespasser standard applies, rather than the standard drawn from Restatement (Second) of Torts § 339. *Sirek*, 496 N.W.2d at 811.

The standard in section 339 of the Restatement is inapplicable to situations that "may reasonably be expected to be understood and appreciated by any child of an age to be allowed at large." *Sirek*, 496 N.W.2d at 811 (quoting section 339, comment j.); *Schaffer v. Spirit Mountain Recreation Area*, 541 N.W.2d 357, 360 (Minn. Ct. App. 1995).

It is inappropriate for the trial court to allow the jury to choose whether to apply this rule or the rule applicable to adult trespassers to the facts of the case. The court must make that decision. *Hughes v. Quarve & Anderson Co.*, 338 N.W.2d 422, 425 (Minn. 1983). If a plaintiff requests and obtains an instruction based on the Restatement (Second) of Torts § 339, the plaintiff must prove, inter alia, that he did not discover the condition or realize the risk involved in intermeddling. The plaintiff runs the risk of complete denial of recovery if the jury believes he is mature enough to appreciate the risk. See *Hughes*, 338 N.W.2d at 425. There is no set age at which a plaintiff should be denied an instruction based on section 339. See 338 N.W.2d at 424.

Prior to *Peterson v. Balach*, 294 Minn. 161, 199 N.W.2d 639 (1972), the rule of section 339 was applied whether the child was a trespasser



or a licensee. See *Szyplinski v. Midwest Mobile Home Supply Co.*, 308 Minn. 152, 155–56, 241 N.W.2d 306, 309 (1976); *Peterson v. Richfield Plaza, Inc.*, 252 Minn. 215, 221, 89 N.W.2d 712, 717 (1958).

**Research References**

*West's Key Number Digest*

Negligence ☞ 1017, 1172 to 1178, 1733

*Legal Encyclopedias*

C.J.S., Negligence §§ 399, 472 to 526, 871, 880 to 882, 885 to 887, 891, 904 to 905



## CIVJIG 85.22

## DEFINITION OF ENTRANT

## Definition of an "entrant"

An "entrant" is a person who enters or stays on the property of another [and is not a trespasser].

[Give CIVJIG 85.10 if required.]

---

USE NOTE

If the status of a person entering the land of another is clear, the court should choose the applicable rule of law that governs the duty of the possessor of the property. However, where the status is unclear, the jury may appropriately be asked to determine the person's status. In that event, the special verdict form should include a question concerning the person's status. Under Minnesota law, the only important distinction is between trespassers and other entrants on land.

## AUTHORITIES

Following *Peterson v. Balach*, 294 Minn. 161, 165, 199 N.W.2d 639, 642 (1972), the status of an entrant as a licensee or invitee is no longer controlling in establishing the duty owed to the entrant. However, the duty owed to trespassers remains unaffected by *Peterson*.

It may be unclear whether a person is an entrant on property or a trespasser. Where the person's status is clear, the court should choose the applicable rule of law that governs the duty of the possessor of the property. See *Reider v. City of Spring Lake Park*, 480 N.W.2d 662, 666-667 (Minn. Ct. App. 1992), rev. denied (Minn. April 13, 1992). However, where the status is unclear, the jury may appropriately be asked to determine the person's status. See *Rieger v. Zackoski*, 321 N.W.2d 16, 20 (Minn. 1982).

The landowner owes a duty of reasonable care to persons entering upon the land, whether the purpose for the entry is that of a social guest or business invitee. The status distinction is no longer controlling with regard to the landowner's duty or the standards of care imposed upon him. Many factors will bear on the question of the landowner's reasonable conduct, depending upon the circumstances presented. One of the factors will be the purpose for which or the circumstances under which the entrant entered upon the premises. See *Bisher v. Homart Develop. Co.*, 328 N.W.2d 731, 733 (Minn. 1983); *Peterson v. Balach*, 294 Minn. 161, 174, n. 7, 199 N.W.2d 639, 648, n. 7 (1972).

An entrant who exceeds the scope of the possessor's invitation or permission may become a trespasser. *See Rieger v. Zackoski*, 321 N.W.2d 16, 20 (Minn. 1982).

**Research References**

*West's Key Number Digest*  
Negligence ☞1035

*Legal Encyclopedias*  
C.J.S., Negligence §§ 399 to 400

**CIVJIG 85.25****DUTY OF POSSESSOR AND ENTRANT****Possessor's duty to protect entrants**

A possessor of property has a duty to an entrant to use reasonable care to protect him or her from unreasonable risk of harm (caused by the condition of the premises) (caused by activities on the premises).

**Entrant's duty to use reasonable care**

An entrant on another's property has a duty to use reasonable care for his or her own safety while on the premises.

**Definition of "negligence" and "reasonable care"**

"Reasonable care" is the care you would expect a reasonable person to use in the same or similar circumstances.

"Negligence" occurs when a person:

1. Does something a reasonable person would not do, or
2. Fails to do something a reasonable person would do.

---

**USE NOTE**

This instruction should be used in cases involving negligence claims against possessors of property by entrants on property. It applies both to possessors and entrants on land. It applies whether the claim is based on either a condition on the property or the possessor's activities on the property. The instruction tracks the general negligence instruction in CIVJIG 25.10. The supreme court in *Peterson v. Balach*, 294 Minn. 161, 174, 199 N.W.2d 639, 648 (1972) provided a broad list of factors that can be applied in determining whether reasonable care was exercised by the possessor or entrant. This instruction can be expanded by including the relevant factors, as noted in the Authorities. Because the standard applicable to possessors of and entrants on land is a general negligence standard, the general negligence special verdict forms may be used in these cases. See CIVSVF 28.90–28.93.



## AUTHORITIES

The standard encompassed in the jury instruction was adopted by the Minnesota Supreme Court in *Peterson v. Balach*, 294 Minn. 161, 174, 199 N.W.2d 639, 647 (1972). The court has approved the instruction. See, e.g., *Bisher v. Homart Develop. Co.*, 328 N.W.2d 731, 733 (Minn. 1983); *Conover v. Northern States Power Co.*, 313 N.W.2d 397, 406 (Minn. 1981); *Flom v. Flom*, 291 N.W.2d 914, 917 (Minn. 1980).

In *Peterson*, 294 Minn. at 174, n.7, 199 N.W.2d at 648, n.7, the court set out a nonexclusive list of factors that might be considered:

Among the factors to be considered might be the circumstances under which the entrant enters the land (licensee or invitee); foreseeability or possibility of harm; duty to inspect, repair, or warn; reasonableness of inspection or repair; and opportunity and ease of repair or correction.

See also *Louis v. Louis*, 636 N.W.2d 314, 322 n. 9 (Minn. 2001), noting the non-exclusive list of factors noted in CIVJIG 85.28 (5th ed. 1999) and *Peterson*. In *Betzold v. Sherwin*, 404 N.W.2d 286, 289 (Minn. Ct. App. 1987), the court of appeals held that a homeowner has a duty to warn entrants of obvious or known dangers if the homeowner can anticipate that the dangerous condition will cause physical harm.

A landowner's duty of reasonable care to others entering the land "is not violated, absent extraordinary circumstances, when a landowner waits a reasonable time after the end of a storm before removing ice and snow." *Johnson v. Alford & Neville, Inc.*, 397 N.W.2d 591, 593 (Minn. Ct. App. 1986); see also *Niemann v. Northwestern College*, 389 N.W.2d 260, 261-262 (Minn. Ct. App. 1986). Although the landowner may wait until the end of a storm before removing snow and ice, the landowner will be able to avoid "liability only if the hazardous condition did not pre-exist the storm." *Johnson*, 397 N.W.2d at 593. If the dangerous condition is pre-existing, it would come within the "extraordinary circumstances" exception to the rule. 397 N.W.2d at 593.

In general, the standard for determining whether a landowner owes a duty to entrants on land is "that of reasonable care under the existing circumstances." *Myers v. Winslow R. Chamberlain Co.*, 443 N.W.2d 211, 214 (Minn. Ct. App. 1989), rev. denied (Minn. Sept. 27, 1989).

"A landowner is required to use reasonable care in carrying on activities on the land and to maintain the property's physical condition to ensure entrants on its land are not exposed to unreasonable risks of harm." *Rasivong v. Lakewood Community College*, 504 N.W.2d 778, 783 (Minn. Ct. App. 1993), rev. denied (Minn. Oct. 19, 1993). "A landowner has no duty, however, to protect an entrant on its land from a third party's criminal activities because a criminal act committed by an unknown person 'is not an activity of the owner and does not constitute a



condition of the land.’” 504 N.W.2d at 783–784, citing *Pietila v. Congdon*, 362 N.W.2d 328, 333–334 (Minn. 1985).

Although the distinctions between invitees and licensees has been abolished in Minnesota, an owner and occupier of land must have either actual or constructive knowledge of a dangerous condition before liability will be imposed. See *Otto v. City of St. Paul*, 460 N.W.2d 359, 362–363 (Minn. Ct. App. 1990).

In general, landowners are not liable for harm caused by dangers that are “known or obvious” to entrants. *Louis v. Louis*, 636 N.W.2d 314, 319 (Minn. 2001); *Sutherland v. Barton*, 570 N.W.2d 1, 7 (Minn. 1997); *Baber v. Dill*, 531 N.W.2d 493, 496 (Minn. 1995). However, even though a danger may be known and obvious, landowners may still owe a duty to entrants if they “should anticipate the harm despite such knowledge or obviousness.” *Sutherland*, 570 N.W.2d at 7 (citing Restatement (Second) of Torts § 343A (1965)). The court in *Sutherland* noted that this “language is a crucial qualifier to the general rule.” 570 N.W.2d at 7; *Adee v. Evanson*, 281 N.W.2d 177, 179 (Minn. 1979). Reason to anticipate harm may occur if the landowner “has reason to expect that the invitee will proceed to encounter the known or obvious danger because to a reasonable man in his position the advantages of doing so would outweigh the apparent risk.” *Sutherland*, 570 N.W.2d at 7 (citing Restatement (Second) of Torts § 343A cmt. f.).

In *Frykman v. University of Minnesota-Duluth*, 611 N.W.2d 379 (Minn. Ct. App. 2000), the court of appeals considered the application of *Mattson v. St. Luke’s Hosp.*, 252 Minn. 230, 89 N.W.2d 743 (1958), in a slip-and-fall case. The issue was whether the trial court should have granted judgment notwithstanding the verdict in favor of the defendant, following a plaintiff’s verdict, based on the defendant’s argument that it had no duty to remedy the ice-creating conditions that caused the fall until the storm that caused the conditions had ceased.

The court of appeals noted that the *Mattson* line of cases requires a possessor of land to clear dangerous conditions from its property, but that the issue of what constitutes reasonable care under the circumstances is a jury question, absent compelling circumstances. 611 N.W.2d at 381.

In *Foss v. Kincade*, 766 N.W.2d 317 (Minn. 2009), a three-year-old was injured when he apparently attempted to climb an unsecured bookcase in the Kincade’s house where he and his mother were visiting. The supreme court held that the Kincades “did not owe a legal duty to affix a typical household object because the harm that occurred was not foreseeable.” *Id.* at 319.

The court noted that the first inquiry in a negligence action against a landowner is whether the landowner owes the entrant a duty. *Id.* at 320, citing *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001). Pursuant to *Peterson v. Balach*, 294 Minn. 161, 174, 199 N.W.2d 639, 647 (1972),

a landowner must “use reasonable care for the safety” of entrants, regardless of their status. The court in *Foss* said that according to *Peterson*, “among the factors that might be considered in determining liability are ‘the circumstances under which the entrant enters the land (licensee or invitee); foreseeability or possibility of harm; duty to inspect, repair, or warn; reasonableness of inspection or repair; and opportunity and ease of repair or correction.’” *Id.* quoting *Peterson*, 294 Minn. at 174, 199 N.W.2d at 648 n. 7.

The court applied the standard from *Whiteford* by *Whiteford v. Yamaha Motor Corp., U.S.A.*, 582 N.W.2d 916, 918 (Minn. 1998), on the foreseeability issue:

When determining whether a danger is foreseeable, we “look at whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any conceivable possibility.” . . . A harm which is not objectively reasonable to expect is too remote to create liability . . . Although in most cases the question of foreseeability is an issue for the jury, the foreseeability of harm can be decided by the court as a matter of law when the issue is clear.

766 N.W.2d at 322–23 (citations omitted). Considering all the circumstances of the case, the court concluded that the injury to the child was not foreseeable as a matter of law.

In *Gilmore v. Walgreen Co.*, 759 N.W.2d 433 (Minn. Ct. App. 2009), rev. denied, (Mar. 31, 2009), the plaintiff, a customer at Walgreen’s, tripped over a pallet after a store employee pointed the plaintiff toward an area of the store where he could find a disposable camera. The trial court granted summary judgment for the defendant based on its conclusion that the defendant owed no duty to the plaintiff because of the obviousness of the danger. The court of appeals reversed. The court classified the plaintiff as an invitee and applied Restatement (Second) of Torts § 343A (1965), concluding that while a possessor of land is not ordinarily liable to invitees caused by an obvious or known condition, the possessor is responsible if it could anticipate injury to the plaintiff notwithstanding the obviousness of the danger. The court held that there was a genuine issue of material fact on the issue.

The court of appeals noted the land possessor’s duty to invitees “to exercise reasonable care to construct and to maintain his premises in a reasonably safe condition for their use.” *Id.* at 435, quoting *Bonniwell v. St. Paul Union Stockyards Co.*, 271 Minn. 233, 238, 135 N.W.2d 499, 502 (1965). The court noted the general duty of reasonable care in *Peterson v. Balach*, 294 Minn. 161, 174, 199 N.W.2d 639, 647 (1972), but nonetheless relied upon Restatement (Second) of Torts § 343A (1965), as defining a more specific standard:

Consistent with this rule, a possessor of land is generally not liable to invitees for physical harm caused to them by a condition on the



land if the danger posed by the condition is obvious or known to the invitees. *Zuercher v. N. Jobbing Co.*, 243 Minn. 166, 171, 66 N.W.2d 892, 896 (1954). In *Peterson v. W.T. Rawleigh Co.*, however, the supreme court adopted the rule set forth in Restatement (Second) Torts § 343A (1965), clarifying that a possessor is liable to an invitee for harm caused by a known or obvious condition if the possessor should have “anticipate[d] the harm despite such knowledge or obviousness.” 274 Minn. 495, 496–97, 144 N.W.2d 555, 557 (1966).

759 N.W.2d at 435. The court held that there was a genuine issue of material fact as to whether Walgreen’s met that standard. *Id.* at 437.

In *Renswick v. Wenzel*, 819 N.W.2d 198 (Minn. Ct. App. 2012), rev. denied (Minn. Oct. 16, 2012), the plaintiff, under the influence of drugs and alcohol, attended a New Year’s Eve party held in the defendant’s garage. She sustained serious injuries when she tripped and fell down the stairs on her way to use the bathroom in the basement of the house. The jury found each party to be 50% at fault.

The defendant argued on appeal that the district court erred in denying judgment as a matter of law because the danger the plaintiff faced was open and obvious. The court of appeals rejected the argument:

[A] landowner is not always obligated to warn of a danger; if the danger is open or obvious to an invitee, he has no duty to her. *Baber v. Dill*, 531 N.W.2d 493, 495–96 (Minn.1995). Whether a danger is obvious is an objective question rendering irrelevant whether the injured invitee actually noticed it. *Louis v. Louis*, 636 N.W.2d 314, 321 (Minn.2001). The ultimate question is whether “both the condition and the risk are apparent to and would be recognized by a reasonable man in the position of the visitor, exercising ordinary perception, intelligence, and judgment.” *Id.* (quotation omitted).

Applied here, the question becomes whether a reasonable person in Renswick’s shoes would have recognized the condition and the associated risk of entering Wenzel’s home. The answer is generally one for the jury, not for the court, because whether a condition presents an open or obvious danger and whether the landowner could anticipate the danger are generally fact questions . . . . The district court submitted to the jury the question of whether the danger of the rear entryway and basement stairway was open and obvious. The jury had ample factual ground to answer the question as it implicitly did.

*Id.* at *Renswick v. Wenzel*, 819 N.W.2d 198, 207–08 (Minn. Ct. App. 2012).

### Research References

*West’s Key Number Digest*  
Negligence ☞1032, 1283

*Legal Encyclopedias*

C.J.S., Negligence §§ 228 to 230, 247 to 248, 262 to 264, 399 to 403, 628 to 632,  
654



**CIVJIG 85.31****RECREATIONAL USE**

[The Committee recommends no instruction.]

---

**USE NOTE**

The recreational use statute, M.S.A. §§ 604A.20–604A.27, is intended to promote the use of privately owned lands and water for recreational purposes. Accordingly, the statute imposes liability on owners who permit use of their property only “for conduct which, at law, entitles a trespasser to maintain an action and obtain relief for the conduct complained of.” M.S.A. § 604A.25(1). If the issue concerns the liability of a possessor of land for injury to a trespasser, use CIVJIG 85.10–85.16. If other questions arise concerning the application of the statute, specific special verdict questions and instructions can be formulated that will permit the jury to resolve those questions.

**AUTHORITIES**

The recreational use statute reads as follows:

**§ 604A.20 Policy**

It is the policy of this state, in furtherance of the public health and welfare, to encourage and promote the use of land owned by a municipal power agency and privately owned lands and waters by the public for beneficial recreational purposes, and the provisions of sections 604A.20 to 604A.27 are enacted to that end.

**§ 604A.21 Recreational Land Use; Definitions**

**Subdivision 1. General.** For the purposes of sections 604A.20 to 604A.27, the terms defined in this section have the meanings given them, except where the context clearly indicates otherwise.

**Subd. 2. Charge.** “Charge” means any admission price asked or charged for services, entertainment, recreational use, or other activity or the offering of products for sale to the recreational user by a commercial for profit enterprise directly related to the use of the land.

**Subd. 2a. Dedicated.** “Dedicated” means made available by easement, license, permit, or other authorization.

**Subd. 3. Land.** “Land” means “any of the following which is privately owned or leased or in which a municipal power agency

has rights: land, easements, rights-of-way, roads, water, watercourses, private ways and buildings, structures, and other improvements to land, and machinery or equipment when attached to land.

**Subd. 4. Owner.** "Owner" means the possessor of a fee interest or a life estate, tenant, lessee, occupant, or person in control of the land.

**Subd. 5. Recreational purpose.** "Recreational purpose" includes, but is not limited to, hunting; trapping; fishing; swimming; boating; camping; picnicking; hiking; rock climbing; cave exploring; bicycling; horseback riding; firewood gathering; pleasure driving, including snowmobiling and the operation of any motorized vehicle or conveyance upon a road or upon or across land in any manner, including recreational trail use; nature study; water skiing; winter sports; noncommercial aviation activities; and viewing or enjoying historical, archaeological, scenic, or scientific sites. "Rock climbing" means the climbing of a naturally exposed rock face. "Cave exploring" means the planned exploration of naturally occurring cavities in rock, including passage through any structures placed for the purpose of safe access, access control, or conservation, but does not include the exploration of other, manmade cavities such as tunnels, mines, and sewers. "Noncommercial aviation activities" mean the use of private, nonstaffed airstrips for takeoffs and landings related to other recreational purposes under this subdivision that are not commercial operations under section 360.013, subdivision 45.

**Subd. 6. Recreational trail use.** "Recreational trail use" means use on or about a trail, including but not limited to, hunting, trapping, fishing, hiking, bicycling, skiing, horseback riding, snowmobile riding, and motorized trail riding.

#### § 604A.22 Owner's Duty of Care or Duty to Give Warnings

Except as provided in section 604A.25, an owner who gives written or oral permission for the use of the land for recreational purposes without charge:

- (1) owes no duty of care to render or maintain the land safe for entry or use by other persons for recreational purpose;
- (2) owes no duty to warn those persons of any dangerous condition on the land, whether patent or latent;
- (3) owes no duty of care toward those persons except to refrain from willfully taking action to cause injury; and

(4) owes no duty to curtail use of the land during its use for recreational purpose.

#### **§ 604A.23 Owner's Liability**

An owner who gives written or oral permission for the use of the land for recreational purposes without charge does not by that action:

(1) extend any assurance that the land is safe for any purpose;

(2) confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed; or

(3) assume responsibility for or incur liability for any injury to the person or property caused by an act or omission of the person.

#### **§ 604A.24 Liability; Leased Land, Water Filled Mine Pits**

Unless otherwise agreed in writing, sections 604A.22 and 604A.23 also apply to the duties and liability of an owner of the following land:

(1) land leased to the state or any political subdivision for recreational purpose; or

(2) idled or abandoned, water-filled mine pits whose pit walls may slump or cave, and to which water the public has access from a water access site operated by a public entity;

(3) land of which a municipal power agency is an owner and that is used for recreational trail purposes, and other land of a municipal power agency which is within 300 feet of such land if the entry onto such land was from land that is dedicated for recreational purposes or recreational trail use; or

(4) land leased to the state or otherwise subject to an agreement or contract for purposes of a state-sponsored walk-in access program.

#### **§ 604A.25 Owner's Liability; Not Limited**

Nothing in sections 604A.20 to 604A.27 limits liability that otherwise exists:

(1) for conduct which, at law, entitles a trespasser to maintain an action and obtain relief for the conduct complained of; or



(2) for injury suffered in any case where the owner charges the persons who enter or go on the land for the recreational purpose, except that in the case of land leased to the state or a political subdivision, any consideration received from the state or political subdivision by the owner for the lease is not considered a charge within the meaning of this section. Except for conduct set forth in section 604A.22, clause (3), a person may not maintain an action and obtain relief at law for conduct referred to by clause (1) if the entry upon the land is incidental to or arises from access granted for the recreational trail use of land dedicated, leased, or permitted by the owners for recreational trail use.

#### **§ 604A.26 Land User's Liability**

Nothing in sections 604A.20 to 604A.27 relieves any person using the land of another for recreational purpose from any obligation that the person may have in the absence of sections 604A.20 to 604A.27 to exercise care in use of the land and in the person's activities on the land, or from the legal consequences of failure to employ that care.

#### **§ 604A.27 Dedication; Easement**

No dedication of any land in connection with any use by any person for a recreational purpose takes effect in consequence of the exercise of that use for any length of time except as expressly permitted or provided in writing by the owner, nor shall the grant of permission for the use by the owner grant to any person an easement or other property right in the land except as expressly provided in writing by the owner.

The recreational use statute does not apply where the land is not offered for public use. *See Hughes v. Quarve & Anderson Co.*, 338 N.W.2d 422, 427 (Minn. 1983); *Watters v. Buckbee Mears Co.*, 354 N.W.2d 848, 852 (Minn. Ct. App. 1984). The statute does not apply to municipalities. *See Hovet v. Bagley*, 325 N.W.2d 813, 814–816 (Minn. 1982).

M.S.A. § 466.03, subd. 6e also provides municipalities limited immunity for claims arising out of the use of municipal property intended for or used for recreational purposes or the provision of recreational services.

Any claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services, or from any claim based on the clearing of land, removal of refuse, and creation



of trails or paths without artificial surfaces, if the claim arises from a loss incurred by a user of park and recreation property or services. Nothing in this subdivision limits the liability of a municipality for conduct that would entitle a trespasser to damages against a private person.

The statute does not provide complete immunity, however. The statute makes a municipality liable for conduct that would permit a trespasser to recover against a private person. *Habeck v. Ouverson*, 669 N.W.2d 907, 911 (Minn. Ct. App. 2003), rev. denied (Minn. Dec. 23, 2003). If a child sustains injury, the child trespasser standard of care applies, 669 N.W.2d at 911–12, although not in cases where the standard is inappropriate, because, for example, the hazard “may reasonably be expected to be understood and appreciated by any child of an age to be allowed at large.” *Sirek v. State, Dep’t of Natural Resources*, 496 N.W.2d 807, 811 (Minn. 1993). See also *Stiele v. City of Crystal*, 646 N.W.2d 251, 254 (Minn. Ct. App. 2002).

Minnesota follows the adult standard of care established in the Restatement (Second) of Torts § 335 (1965). That standard applies in cases involving recreational use immunity under M.S.A. § 466.03. The property covered by the statute is not limited to real property and fixtures. It also includes recreational equipment. *Prokop v. Independent School Dist. No. 625*, 754 N.W.2d 709, 714 (Minn. Ct. App. 2008); *Habeck v. Ouverson*, 669 N.W.2d 907, 910 (Minn. Ct. App. 2003), rev. denied (Minn. Dec. 23, 2003).

Liability is imposed under § 335 when a possessor of land:

(1) creates or maintains an artificial condition, (2) that the possessor knows is likely to cause death or serious bodily harm, (3) where the possessor has reason to believe that trespassers will not discover the condition, and (4) the possessor has failed to warn of the condition and the risk involved. Restatement (Second) of Torts § 335. A landowner is liable only for failing to warn of such dangers . . . . A plaintiff must establish all of the elements of the trespasser-liability exception to recreational-use immunity to defeat an immunity claim. *Stiele ex rel. Gladieux v. City of Crystal*, 646 N.W.2d 251, 255 (Minn.App.2002).

*Krieger v. City of St. Paul*, 762 N.W.2d 274, 276 (Minn. Ct. App. 2009). All elements in section 335 must be established to defeat the immunity claim. *Id.*; *Stiele ex rel. Gladieux v. City of Crystal*, 646 N.W.2d 251, 255 (Minn. Ct. App. 2002). The possessor must have actual, rather than constructive knowledge, of the danger. *Prokop v. Independent School Dist. No. 625*, 754 N.W.2d 709, 715 (Minn. Ct. App. 2008).

## LANDLORD AND TENANT

## CIVJIG 85.40

## LEASED PREMISES—LATENT DEFECT—DUTY OF LANDLORD

## Landlord's duty to tell tenants of (an) unsafe condition(s)

The landlord has a duty to warn the tenant about (an) unsafe condition(s) on the property the unsafe condition(s) if:

1. The landlord knows or should know about the unsafe condition(s) on the property, and
2. It was not reasonable to expect the tenant to know about the unsafe condition(s), and
3. It was not reasonable to expect the tenant to discover the unsafe condition(s).

---

USE NOTE

This instruction should be used in cases where the claim is based on the landlord's failure to disclose an unsafe condition on leased property to the tenant at the time of possession.

## AUTHORITIES

The general rule is that a landlord who has not agreed to repair the leased premises and is not guilty of any fraud or concealment as to their condition is not liable to his tenant or to any person entering under the tenant's right or invitation for injuries sustained as the result of an obvious defect. *See Wood v. Prudential Ins. Co. of America*, 212 Minn. 551, 554, 4 N.W.2d 617, 618 (1942); *Meyer v. Parkin*, 350 N.W.2d 435, 437 (Minn. Ct. App. 1984).

Where defects are not obvious at the time of leasing, the landlord is liable for injuries sustained by the tenant or his licensees as a result of the defect, where the landlord knew of the danger or had information that would lead a reasonably prudent person to suspect the danger, and where the tenant exercising due care would not discover it. *Johnson v. O'Brien*, 258 Minn. 502, 506, 105 N.W.2d 244, 247 (1960); *Broughton v.*

*Maes*, 378 N.W.2d 134, 136 (Minn. Ct. App. 1985). In such a case, the landlord has a duty to at least disclose such knowledge or information to the tenant. See 378 N.W.2d at 136. In *Johnson v. O'Brien*, the supreme court affirmed its decision in *Breimhorst v. Beckman*, 227 Minn. 409, 35 N.W.2d 719 (1949) that the liability of the landlord is not limited to those cases where the landlord has actual knowledge of the defect, and overruled decisions such as *Keegan v. G. Heilman Brewing Co.*, 129 Minn. 496, 152 N.W. 877 (1915), and *Ames v. Brandvold*, 119 Minn. 521, 138 N.W. 786 (1912). *Johnson* and *Breimhorst* are consistent with Restatement (Second) of Torts § 358 (1965).

The landlord's liability extends to employees of the tenant, see *Breimhorst v. Beckman*, 227 Minn. 409, 35 N.W.2d 719 (1949); to members of the tenant's family, see *Keegan v. G. Heilman Brewing Co.*, 129 Minn. 496, 500, 152 N.W. 877, 878 (1915), overruled in part by *Johnson v. O'Brien*, 258 Minn. 502, 507, 105 N.W.2d 244, 247 (1960); and to guests and others who enter the premises under the tenant's right, see *Ames v. Brandvold*, 119 Minn. 521, 524, 138 N.W. 786, 787 (1912).

In *Gradjelick v. Hance*, 646 N.W.2d 225 (Minn. 2002), the supreme court clarified the impact of its opinion in *Bills v. Willow Run I Apartments*, 547 N.W.2d 693 (Minn. 1996), which concerned the effect of a Uniform Building Code violation on a negligence claim. The court held that its decision in *Bills*, which established a negligence *per se* standard for Uniform Building Code violations, was not intended to limit the availability of common law negligence claims against landlords, including claims based on hidden dangerous conditions:

(1) *Bills* articulated a standard for negligence *per se* based on UBC violations; (2) *Bills* did not create a unified standard such that allegations of code violation must be analyzed only under negligence *per se*; and (3) analyses under negligence *per se* according to *Bills* and ordinary common law negligence are both available in landlord liability cases when UBC violations are alleged.

646 N.W.2d at 234.

Earlier in its opinion the court noted the relationship between common law negligence claims based on hidden dangerous conditions and UBC violations:

Actual or constructive knowledge of code violations is a required element of a negligence *per se* claim for UBC violations under *Bills*, but actual or constructive knowledge of *code violations* is not a required element in an ordinary negligence claim. Under the hidden dangerous condition exception to the general standard of landlord liability . . . , plaintiffs are required to show a landlord's actual or constructive knowledge of a *hidden dangerous condition*. Such hidden dangerous conditions may include, but are not limited to, code violations; therefore, the district court was in error when it



stated that the Hances' actual or constructive knowledge of a *code violation* was a "crucial element" of the Gradjelick's claim under Minnesota law.

646 N.W.2d at 233.

In *White v. Many Rivers Limited Partnership*, 797 N.W.2d 739 (Minn. Ct. App. 2011), a two-year old child pushed through a screen in his grandmother's third-floor apartment and died in the fall. The plaintiff asserted various theories in the wrongful death action against the landlord. The court of appeals denied recovery under all theories. The court held that there was no duty to warn of the danger presented by the screen, both because of the obvious nature of the danger and because the landlord provided various clear written warnings to its tenants. The tenants and the child's mother were aware of the danger. The court held that the danger was obvious, but that even if there was a duty to warn, the landlord fulfilled that duty. *Id.* at 746.

#### Research References

*West's Key Number Digest*  
Landlord and Tenant ¶162, 164(1)

*Legal Encyclopedias*  
C.J.S., Landlord and Tenant §§ 893 to 894, 896 to 897, 902, 909



**CIVJIG 85.43****LEASED PREMISES—AREAS CONTROLLED BY  
LANDLORD****Landlord's duty in common areas**

The landlord has a duty to use reasonable care to keep areas on the property that the landlord controls, such as (state the areas involved, e.g., the stairs, hallways, etc.) reasonably safe for the tenants and their guests.

The landlord's duty includes the responsibility to use reasonable care to inspect, to find, and to repair dangerous conditions.

**Reasonable care**

Reasonable care is the care you would expect a reasonable person to use in the same or similar circumstances.

---

**USE NOTE**

This instruction is for use in cases where a tenant or guest is injured in a common area of the leased property. The issue of control may be a fact question. In those cases, an appropriate special verdict question asking whether the landlord had control over the area in question should be used.

**AUTHORITIES**

The instruction is based upon Restatement (Second) of Torts § 360 (1965), which was approved by the Minnesota Supreme Court in *Lillemoen v. Gregorich*, 256 N.W.2d 628, 631 (Minn. 1977). Section 360 reads as follows:

A possessor of land who leases a part thereof and retains in his own control any other part which the lessee is entitled to use as appurtenant to the part leased to him, is subject to liability to his lessee and others lawfully upon the land with the consent of the lessee or a sublessee for physical harm caused by a dangerous condition upon that part of the land retained in the lessor's control, if the lessor by the exercise of reasonable care could have discovered the condition and the unreasonable risk involved therein and could have made the condition safe.

The control issue is one of fact. *Lillemoen*, 256 N.W.2d at 632.

Although a landlord is not an insurer of the safe condition of the leased premises, see *Hill v. Gaertner*, 253 Minn. 457, 459, 92 N.W.2d 810, 812 (1958); *Nubbe v. Hardy Continental Hotel System of Minnesota*, 225 Minn. 496, 499, 31 N.W.2d 332, 334 (1948), when the landlord reserves possession and control over a portion of the premises for the common use of his tenants, he is under a duty to exercise ordinary care to keep the reserved portion in a reasonably safe condition for the use of his tenants and their visitors. See *Strong v. Shefveland*, 249 Minn. 59, 63-65, 81 N.W.2d 247, 250-251 (1957); *Standafer v. First Nat'l Bank*, 243 Minn. 442, 446, 68 N.W.2d 362, 365 (1955); *Swenson v. Slawik*, 236 Minn. 403, 408, 53 N.W.2d 107, 110 (1952); *Iverson v. Quam*, 226 Minn. 290, 295, 32 N.W.2d 596, 600 (1948); *Nubbe v. Hardy Continental Hotel System of Minnesota*, 225 Minn. 496, 499, 31 N.W.2d 332, 334 (1948); Restatement (Second) of Torts § 360 (1965). The duty of reasonable care is a continuing one throughout the period of common use by the tenants and necessarily encompasses an obligation to make reasonable inspections from time to time. See *Graeber v. Anderson*, 237 Minn. 20, 26-27, 53 N.W.2d 642, 646, (1952); *Nubbe v. Hardy Continental Hotel System of Minnesota*, 225 Minn. 496, 499, 31 N.W.2d 332, 334 (1948).

The landlord's duty to use reasonable care has been applied in cases involving the common use of alleys, see *Rosmo v. Amherst Holding Co.*, 235 Minn. 320, 324, 50 N.W.2d 698, 701 (1951); approaches to the premises, even though the dangerous conditions have arisen from natural causes, see *Strong v. Shefveland*, 249 Minn. 59, 67, 81 N.W.2d 247, 252 (1957); and halls and stairways, see *Jeske v. George R. Wolff Holding Co.*, 250 Minn. 16, 21, 83 N.W.2d 729, 732 (1957); *Vosbeck v. Lerdall*, 245 Minn. 164, 169, 72 N.W.2d 371, 375 (1955); *McGenty v. John A. Stephenson & Co.*, 218 Minn. 311, 314, 15 N.W.2d 874, 875 (1944).

In *White v. Many Rivers Limited Partnership*, 797 N.W.2d 739 (Minn. Ct. App. 2011), a two-year old child pushed through a screen in his grandmother's third-floor apartment and died in the fall. The plaintiff asserted various theories in the wrongful death action against the landlord. The court of appeals denied recovery under all theories.

The plaintiffs argued that the landlord retained control over the repair and maintenance of the window screens and that it therefore owed a duty of care to see that the screens were properly maintained. The court of appeals noted the common law exception imposing a duty on a landlord to use reasonable care with respect to common areas such as stairs, halls, elevators, or yard space, but held that the exception was inapplicable in the *White* case because the "individual apartment windows were not open to common use by all tenants and they are not subject to the landlord's control." *Id.* at 745. The fact that the landlord painted the windows and addressed tenant complaints about the windows did not establish the necessary "control" for purposes of applying the exception. *Id.*

**Research References**

*West's Key Number Digest*

Landlord and Tenant ⚙ 162, 164, 167(8)

*Legal Encyclopedias*

C.J.S., Landlord and Tenant §§ 893 to 900, 902 to 910, 932

**CIVJIG 85.46****LEASED PREMISES—NEGLIGENT BREACH OF  
COVENANT TO REPAIR****Landlord's duty to repair**

The landlord is negligent if:

1. The landlord agreed in the lease (or otherwise) to keep the property in repair, and
2. The landlord failed to exercise reasonable care to perform the agreement, and
3. The failure to repair created an unreasonable risk to persons on the property that could have been prevented if the agreement had been kept.

[The failure to repair may have existed either before or after the tenant took possession.]

---

**USE NOTE**

This instruction is intended for use in cases where the claimant alleges that the lessor of property negligently breached a covenant to repair the premises.

**AUTHORITIES**

The instruction is based upon Restatement (Second) of Torts § 357 (1965), which reads as follows:

A lessor of land is subject to liability for physical harm caused to his lessee and others upon the land with the consent of the lessee or his sublessee by a condition of disrepair existing before or arising after the lessee has taken possession if

(a) the lessor, as such, has contracted by a covenant in the lease or otherwise to keep the land in repair, and

(b) the disrepair creates an unreasonable risk to persons upon the land which the performance of the lessor's agreement would have prevented, and

(c) the lessor fails to exercise reasonable care to perform his contract.



A lessor is obligated to exercise reasonable care to perform a covenant to repair a dangerous condition on the premises. See *Saturnini v. Rosenblum*, 217 Minn. 147, 152, 14 N.W.2d 108, 111 (1944); *Barron v. Liedloff*, 95 Minn. 474, 475-476, 104 N.W. 289, 290 (1905).

M.S.A. § 504B.161 creates a statutory covenant of habitability for residential premises. The landlord is required to keep the premises in reasonable repair, fit for their intended use by the parties, reasonably energy efficient, and maintained in compliance with applicable health and safety laws. Subdivision 1 reads as follows:

(a) In every lease or license of residential premises, the landlord or licensor covenants:

(1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee;

(3) to make the premises reasonably energy efficient by installing weatherstripping, caulking, storm windows, and storm doors when any such measure will result in energy procurement cost savings, based on current and projected average residential energy costs in Minnesota, that will exceed the cost of implementing that measure, including interest, amortized over the ten-year period following the incurring of the cost; and

(4) to maintain the premises in compliance with the applicable health and safety laws of the state, and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

(b) The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

In *Meyer v. Parkin*, 350 N.W.2d 435 (Minn. Ct. App. 1984), the court of appeals examined the impact of the warranty of habitability on a landlord's tort liability:

It seems clear that the legislature did not intend to alter a landlord's tort liability but only to require a landlord to covenant to keep leased residential premises in reasonable repair, fit for their

intended use and maintained in compliance with applicable health and safety laws. Prior to the enactment of section 504.18, these covenants of habitability had to be individually negotiated on a lease by lease basis. \* \* \* They are now made part of every residential lease.

350 N.W.2d at 438. However, the court concluded that the legislature did not intend to eliminate the scienter requirement from the rule that a lessor has a duty to warn a lessee of any concealed defects of which the lessor is aware or should have been aware. 350 N.W.2d at 438-39. *See also Broughton v. Maes*, 378 N.W.2d 134, 136, n. 1 (Minn. Ct. App. 1985); *Hanson v. Roe*, 373 N.W.2d 366, 370 (Minn. Ct. App. 1985).

In *White v. Many Rivers Limited Partnership*, 797 N.W.2d 739 (Minn. Ct. App. 2011), the court of appeals held that a landlord owed no common law duty to tenants to install window screens that would be strong enough to prevent the fall of a child through the screen, and that the landlord had no common law duty to warn of the hazard of a child falling through the screen when the danger was open and obvious and the tenant was otherwise aware of the hazard.

The plaintiffs argued that the landlord was subject to liability under the negligent repair exception to the common law no-duty rule because, by regularly removing and repairing the screens, the landlord assumed a duty to fix the windows with due care. The plaintiffs argued that the reason the screens easily fell out of place was because the landlord negligently repaired them. The court of appeals rejected the argument.

The court acknowledged that if a landlord assumes the duty to correct a defect if not required by the lease to do so, the landlord must use reasonable care in carrying out its duty.

The duty of reasonable care to make a good job of repairs requires only that "the necessary repairs [be performed] in a reasonable way." . . . The landlord's duty is not to make improvements to the safety of the thing repaired exceeding the safety standards otherwise imposed by law. Unless the Whites can establish that the screens were designed to contain a child and that the landlord's repairs unreasonably controverted that design, the negligent-repair exception does not apply to create a duty. The Whites cannot make that showing.

*Id.* at 744 (citations omitted).

#### Research References

*West's Key Number Digest*  
Landlord and Tenant ¶164(2)

*Legal Encyclopedias*  
C.J.S., Landlord and Tenant §§ 893 to 895, 909

## CIVJIG 85.49

## LEASED PREMISES—NEGLIGENT REPAIR

## Ineffective or deceptive repairs

A landlord who claims to make repairs, or fails to use reasonable care in making repairs, is negligent if:

1. The result makes the property more dangerous, or
2. The property appears safe and is not.

---

USE NOTE

This instruction applies in cases where the landlord makes repairs but does so negligently.

## AUTHORITIES

The instruction is based on Restatement (Second) of Torts § 362 (1965), which reads as follows:

A lessor of land who, by purporting to make repairs on the land while it is in the possession of the lessee, or by the negligent manner in which he makes such repairs has, as the lessee neither knows nor should know, made the land more dangerous for use or given it a deceptive appearance of safety, is subject to liability for physical harm caused by the condition to the lessee or to others upon the land with the consent of the lessee or sublessee.

The exception noted in section 362 has been recognized by the Minnesota Supreme Court. See *Wood v. Prudential Ins. Co. of America*, 212 Minn. 551, 556–557, 4 N.W.2d 617, 620 (1942). See also *Drager v. Aluminum Industries Corp.*, 495 N.W.2d 879, 885 (Minn. Ct. App. 1993), rev. denied (Minn. April 20, 1993); *Oakland v. Stenlund*, 420 N.W.2d 248, 250 (Minn. Ct. App. 1988), rev. denied (Minn. April 20, 1988).

## Research References

*West's Key Number Digest*  
Landlord and Tenant ¶164(3)

*Legal Encyclopedias*  
C.J.S., Landlord and Tenant §§ 893 to 894, 898, 909



## CIVJIG 85.50

**LEASED PREMISES-UNIFORM BUILDING CODE  
VIOLATION****Uniform Building Code**

A condition on the property violates the Uniform Building code if

1. The landlord violated (note appropriate section of the Uniform Building Code), and
2. The landlord knew or should have known of the violation, and
3. The landlord failed to take reasonable steps to fix the violation, and
4. The violation was a direct cause of the accident.

---

**USE NOTE**

This instruction is intended for use in cases where there is an alleged Uniform Building Code violation. Before giving the instruction, the court must first determine that the plaintiff was a person intended to be protected by the Uniform Building Code and that the injury sustained by the plaintiff was the type of injury the Uniform Building Code was intended to prevent.

**AUTHORITIES**

In *Bills v. Willow Run I Apartments*, 547 N.W.2d 693 (Minn. 1996), the supreme court held that a violation of the Uniform Building Code, without notice to the landlord of the violation, will not create negligence *per se*:

A landlord or owner is not negligent *per se* for a violation of the UBC unless: (1) the landlord or owner knew or should have known of the Code violation; (2) the landlord or owner failed to take reasonable steps to remedy the violation; (3) the injury suffered was the kind the code was meant to prevent; and (4) the violation was the proximate cause of the injury or damage.

547 N.W.2d at 695. See also *Taney v. Independent School District No. 624*, 673 N.W.2d 497, 505 (Minn. Ct. App. 2004), rev. denied (Minn.



March 30, 2004). In *Alderman's Inc. v. Shanks*, 536 N.W.2d 4, 8 (Minn. 1995), the supreme court framed the statutory purpose analysis more broadly in holding "that breach of a statute gives rise to negligence *per se* if the persons harmed by that violation are within the intended protection of the statute, and the harm suffered is of the type the legislation was intended to prevent."

**Research References**

*West's Key Number Digest*  
Landlord and Tenant ¶164(1)

*Legal Encyclopedias*  
C.J.S., Landlord and Tenant §§ 893 to 894, 896 to 897, 902, 909

## CIVJIG 85.52

## LEASED PREMISES—PUBLIC USE

## Landlord's duty to the public

A landlord is negligent if:

1. The landlord leases property for a purpose that involves admitting the public, and
2. The tenant has taken possession of the property, and
3. The landlord knew or could reasonably be expected to know about the risk of harm, and
4. The landlord had reason to expect that the tenant would admit users before the property was safe, and
5. The landlord failed to use reasonable care to find and remedy the condition or otherwise protect the users.

---

USE NOTE

This instruction incorporates the public use exception to the general rule of nonliability for landlords.

## AUTHORITIES

The Minnesota Supreme Court indicated approval of the public use exception as established by Restatement (Second) of Torts § 359 (1965), in *Torwick v. Lisle*, 268 Minn. 197, 199, 128 N.W.2d 330, 332 (1964). See also *Filipczak v. International Bhd. of Elec. Workers*, 292 Minn. 486, 195 N.W.2d 433 (1972).

Section 359 of the Restatement reads as follows:

A lessor who leases land for a purpose which involves the admission of the public is subject to liability for physical harm caused to persons who enter the land for that purpose by a condition of the land existing when the lessee takes possession, if the lessor

(a) knows or by the exercise of reasonable care could discover that the condition involves an unreasonable risk of harm to such persons, and

(b) has reason to expect that the lessee will admit them before the land is put in safe condition for their reception, and

(c) fails to exercise reasonable care to discover or to remedy the condition, or otherwise to protect such persons against it.

In *Rice v. Forby*, 304 Minn. 23, 26, 228 N.W.2d 581, 583 (1975), the court noted the formulation of the public purpose exception in *Breimhorst v. Beckman*, 227 Minn. 409, 420, 35 N.W.2d 719, 727 (1949), in which the court said that “a lessor, by leasing the premises for a purpose involving the admission of the public, may incur liability to a patron of the lessee who has sustained injury by reason of a dangerous artificial condition existing on the premises at the time they were leased.”

#### Research References

*West's Key Number Digest*  
Landlord and Tenant ⇨167(8)

*Legal Encyclopedias*  
C.J.S., Landlord and Tenant §§ 904 to 908, 932

## CIVJIG 85.55

## ABNORMALLY DANGEROUS ACTIVITIES

[The Committee recommends no instruction.]

---

USE NOTE

The question of whether strict liability applies is a question for the court. No jury instruction should be given, unless there is an issue concerning one of the elements of the strict liability formulation.

## AUTHORITIES

The Minnesota Supreme Court adopted the doctrine of *Rylands v. Fletcher*, 1865, 3 H. & C. 774, 1866, L.R. 1 Ex. 265, 1868, L.R. 3 H.L. 330, in *Cahill v. Eastman*, 18 Minn. 324 (Gil.292) (1872). The doctrine applies to a person who maintains a condition, or engages in an activity, involving a high degree of risk of harm to others that is abnormal in the community and inappropriate to its surroundings. In such cases strict liability applies. See Dan B. Dobbs et al., *The Law of Torts* 2d §§ 441-444 (2011).

In *Berger v. Minneapolis Gaslight Co.*, 60 Minn. 296, 62 N.W. 336 (1895), the Minnesota Supreme Court held that the doctrine was limited “to those things the natural tendency of which \* \* \* is to become a nuisance or to do mischief, if they escape \* \* \*.” 60 Minn. at 301, 62 N.W. at 338. Focusing upon this limitation, the court in *Wiltse v. Red Wing*, 99 Minn. 255, 109 N.W. 114 (1906), stated the Minnesota rule as follows:

The rule to be deduced from the decisions of this court is to the effect that a party who, for his own profit, keeps on his premises anything not naturally belonging there, the natural tendency of which is to become a nuisance and to do mischief if it escapes, is liable if it escapes, without proof of negligence, for all damages directly resulting therefrom.

99 Minn. at 260, 109 N.W. at 115. The rule has been held applicable to the falling of snow from a roof, see *Hannem v. Pence*, 40 Minn. 127, 130, 41 N.W. 657, 658 (1889); the escape of oil from a tank or oil well, see *Berger v. Minneapolis Gaslight Co.*, 60 Minn. 296, 300, 62 N.W. 336, 337 (1895); the escape of water from a reservoir, see *Wiltse v. Red Wing*, 99 Minn. 255, 260, 109 N.W. 114, 115 (1906); the escape of water from a break in a principal main leading from a water reservoir, see *Bridgeman-Russell Co. v. Duluth*, 158 Minn. 509, 510-11, 197 N.W. 971, 972 (1924); and pile-driving, see *Sachs v. Chiat*, 281 Minn. 540, 543-44, 162 N.W.2d 243, 246 (1968).

Strict liability has been held inapplicable to the escape of gas, see



*Mahowald v. Minnesota Gas Co.*, 344 N.W.2d 856, 862 (Minn. 1984); *Gould v. Winona Gas Co.*, 100 Minn. 258, 264, 111 N.W. 254, 256 (1907); to the escape of water from a dam in the natural bed of a river. See *City Water Power Co. v. Fergus Falls*, 113 Minn. 33, 36, 128 N.W. 817, 818 (1910); and to electricity, see *Ferguson v. Northern States Power Co.*, 307 Minn. 26, 32–33, 239 N.W.2d 190, 194 (1976).

The same conditions or activities that impose liability on a defendant under a strict liability theory may impose strict liability under a private nuisance theory under M.S.A. § 561.01. See Dan B. Dobbs et al., *The Law of Torts* 2d § 400 (2011). Strict liability, however, is only one of the ways in which a nuisance may arise. See Dobbs, at § 400.

Later decisions of the supreme court have resulted in a lack of clarity concerning the current standards to be applied to strict liability claims. The supreme court has noted the standards established in the Restatement (Second) of Torts § 520. See *Cairl v. St. Paul*, 268 N.W.2d 908 (Minn. 1978); *Ferguson v. Northern States Power Co.*, 307 Minn. 26, 32–33, 239 N.W.2d 190, 194 (1976) (tentative draft number 10). However, in *Mahowald v. Minnesota Gas Co.*, 344 N.W.2d 856, 861–862 (Minn. 1984), the court indicated that the Restatement standard has not been accepted. The court in that case rejected the argument that strict liability should be applied to a gas company for the escape of gas. See also *Herbst v. Northern States Power Co.*, 432 N.W.2d 463, 467 (Minn. Ct. App. 1988), rev. denied (Minn. Feb. 10, 1989) (strict liability inapplicable to NSP for pipeline explosion, but NSP held to high degree of care).

## SIDEWALKS AND STREETS

## CIVJIG 85.60

DUTY OF OWNER OF PROPERTY ABUTTING  
SIDEWALK**Property owner's duty not to create unsafe conditions**

A property owner has a duty to use reasonable care not to create or contribute to unsafe conditions (that would interfere) (by interfering) with the usual and regular use of the (sidewalk) (boulevard).

Violation of this duty is negligence.

---

USE NOTE

This instruction is intended for use in cases involving the liability of an owner of property for injuries occurring on the adjoining public sidewalk or boulevard. Depending on the case, the appropriate language in the instruction should be used, based on whether the issue involves injuries on a sidewalk or boulevard. In the second part of the instruction, the appropriate language should be selected, depending on whether the owner has created or contributed to a condition that either would interfere or does in fact interfere with the usual and regular use of the sidewalk or boulevard.

## AUTHORITIES

It is the duty of the municipality, rather than the abutting owner, to maintain sidewalks and other public ways in a safe condition for the travel of pedestrians. See *Loewe v. City of Le Sueur*, 277 Minn. 94, 97-98, 151 N.W.2d 777, 780 (Minn. 1967); *Scott v. Village of Olivia*, 260 Minn. 346, 350, 110 N.W.2d 21, 25 (1961); *Donald v. Moses*, 254 Minn. 186, 195, 94 N.W.2d 255, 261 (1959); *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 519, 83 N.W.2d 96, 100 (1957); *Bentson v. Berde's Food Center, Inc.*, 231 Minn. 451, 455, 44 N.W.2d 481, 483 (1950). Ordinances requiring abutting owners or occupants to build or keep the sidewalks in proper repair do not exonerate the city from its obligation; they merely delegate the duty to such persons as agents of the municipality. See *Donald v. Moses*, 254 Minn. 186, 195, 94 N.W.2d 255, 261 (1959); *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 522, 83 N.W.2d 96, 101 (1957).

The owner of property abutting a sidewalk owes the public no duty to keep the sidewalk in a reasonably safe condition for travel. See *Sterni-*

*tzke v. Donahue's Jewelers*, 249 Minn. 514, 522-23, 83 N.W.2d 96, 101-02 (1957). The owner has no duty to remove dangerous objects, obstructions, or nuisances from the sidewalk. See 249 Minn. at 522-23, 83 N.W.2d at 101-02. However, an adjoining landowner has a duty not to act so as to create hazards on public sidewalks. See *Sand v. Little Falls*, 237 Minn. 233, 235-36, 55 N.W.2d 49, 50-51 (1952); *Shepstedt v. Hayes*, 221 Minn. 74, 21 N.W.2d 199 (1945); *Williams v. John A. Stees Co.*, 172 Minn. 35, 37, 214 N.W. 671, 671 (1927); *Olson v. St. James*, 380 N.W.2d 555, 560 (Minn. Ct. App. 1986). Thus, where the defect or dangerous condition has been created by the abutting owner or his servant, or where he has been negligent by maintaining in a dangerous and defective condition facilities erected on the sidewalk for his convenience or for the benefit of his building, there is a duty to keep the sidewalk in a reasonably safe condition. *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 522-23, 83 N.W.2d 96, 101-02 (1957). For example, the abutting owner is not liable for injuries suffered as a result of slipping and falling on a sidewalk that has become slippery and dangerous from natural accumulations of ice and snow, see *Graalum v. Radisson Ramp, Inc.*, 245 Minn. 54, 59-60, 71 N.W.2d 904 (1955); or where dangerous conditions are created by the normal flow of vehicular traffic, see *McDonough v. St. Paul*, 179 Minn. 553, 556, 230 N.W. 89, 90 (1930); *Olson v. St. James*, 380 N.W.2d 555, 560 (Minn. Ct. App. 1986). But where the abutting owner uses or maintains his property in a manner that artificially causes dangerous ice to form on the sidewalk, the owner may be liable for injuries suffered by a pedestrian falling on the sidewalk. See 380 N.W.2d at 560; *Bentson v. Berde's Food Center, Inc.*, 231 Minn. 451, 455, 44 N.W.2d 481, 483 (1950). In any event, absent actual or constructive notice of the defect, the landowner is not liable. See *Bergum v. Palmborg*, 240 Minn. 122, 126, 60 N.W.2d 71, 73 (1953).

The owner of property, responsible for defective conditions existing on a sidewalk adjacent to his property is not necessarily relieved of liability merely by leasing the premises. Thus, where a facility is maintained on the owner's property for the convenience of the owner's building, and the facility is permitted to become defective and dangerous, the owner may be liable for injuries suffered by a pedestrian as a result of the defective condition, even though the adjacent property is occupied by a tenant. See *Shepstedt v. Hayes*, 221 Minn. 74, 82, 21 N.W.2d 199, 203 (1945). The tenant also may be held liable under circumstances where the tenant maintained the dangerous condition created by the owner. Control is the essential factor. See *Scott v. Village of Olivia*, 260 Minn. 346, 353 110 N.W.2d 21, 27 (1961).

The defective conditions referred to above are actual physical conditions of the sidewalk. The Minnesota Supreme Court has also recognized that an abutting owner has the duty of exercising reasonable care in conducting activities upon his property so that the acts committed upon the property will not expose a member of the public to the risk of bodily harm while passing by on the sidewalk. See *Connolly v. Nicollet Hotel*, 254 Minn. 373, 380, 95 N.W.2d 657, 663 (1959).



In *Brandenburg v. Minnehaha Warehouse Liquors*, 1996 WL 250556 (Minn. Ct. App. 1996), rev. denied (Minn. July 10, 1996), the court of appeals noted that:

It has long been the law in Minnesota that the duty of keeping a sidewalk in a reasonably safe condition for travel is upon the city or municipality and not on the abutting owners or occupants, and the abutting owner or occupant is not liable for any defect therein unless created by him or his agents or servants. In other words, the duty of keeping a sidewalk in a reasonably safe condition for travel is placed on the city and is not on abutting owners or occupants unless they created the defect or dangerous condition or were negligent in maintaining in a dangerous and defective condition facilities erected on the sidewalk for their convenience or for the benefit of their building. Persons who own or occupy property abutting on a sidewalk are not liable to pedestrians for injuries sustained in consequence of stumbling or slipping on ridges or hummocks of snow and ice which form from natural causes on the sidewalk.

1996 WL 250556 at 1, citing *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 519-20, 83 N.W.2d 96, 100 (1957).

In 1986, the legislature revised M.S.A. § 466.03, subd. 4, to expand municipal immunity to include claims "based on snow or ice conditions on any highway or public sidewalk that does not abut a publicly-owned building or publicly-owned parking lot." Prior to the amendment, the statute provided immunity for claims "based on snow or ice conditions on any highway or other public place." The plaintiffs in *Brandenburg* argued that the expanded city immunity for claims based on snow or ice conditions on sidewalks meant that abutting landlords are now liable for failure to maintain their sidewalks. Based on *Sternitzke*, the plaintiffs argued that the reason for the prior failure to impose a duty on landowners to maintain sidewalks was that doing so would be an improper delegation of the city's responsibility. Because the city no longer has that duty, they argued that the defendant-property owner should absorb responsibility for ice and snow conditions. The court of appeals in *Brandenburg* rejected the argument:

*Sternitzke* did not hold that an abutting landowner has no duty to maintain a city sidewalk because the city cannot delegate its duty; *Sternitzke* simply recognized the long-existing common law rule that an abutting landowner has no duty and held that a city ordinance that required a business owner to clear ice and snow from the public sidewalk did not create a duty owed to individual pedestrians . . . .

Because the common law rule that an abutting landowner owes no duty to sidewalk users is not dependent on the existence of municipal liability, we are not persuaded that granting cities immunity for claims based on snow or ice conditions on sidewalks automatically imposed on abutting landowners a duty that did not previously exist.



1996 WL 250556 at 2. The plaintiffs also argued that the heavy use of the sidewalk made it an extraordinary use of the sidewalk. Although there is an exception from the general rule of nonliability of an abutting landowner for extraordinary uses, the court of appeals held that the use was not so heavy that it ceased “to perform its normal function as a reasonably safe route for pedestrian travel.” 1996 WL 250556 at 3.

In *Doyle v. City of Roseville*, 524 N.W.2d 461 (Minn. 1994), the plaintiff was injured when she slipped and fell on ice in the Roseville Ice Arena parking lot. Distinguishing *Bufkin v. City of Duluth*, 291 N.W.2d 225 (Minn. 1980), the supreme court held that the “mere slipperiness” rule, which was settled law prior to the adoption of the Municipal Tort Liability Act, continues to be good law. The court noted that under that rule, “[a] municipality has never been held liable for injuries sustained in a fall on newly formed glare ice although a municipality is liable if it negligently permits an accumulation of ice and snow to remain on a sidewalk for such a period of time that slipperiness and dangerous ridges, hummocks, depressions, and other irregularities develop there.” 524 N.W.2d at 463. The court noted that it had not repudiated the rule in *Bufkin*, but merely declined to apply it in a case where the municipality operated the auditorium at a profit and had the opportunity to correct the dangerous condition.

In *Doyle*, the court saw no reason to deviate from the “mere slipperiness” rule, and determined that the city was entitled to summary judgment. It was unnecessary for the court to consider the issue of immunity under M.S.A. § 466.03. 524 N.W.2d at 463.

#### Research References

*West's Key Number Digest*  
Municipal Corporations ⇨757(2), 808, 822

*Legal Encyclopedias*  
C.J.S., Municipal Corporations §§ 699, 762, 764 to 772, 774 to 778, 868

## CIVJIG 85.63

SIDEWALKS AND STREETS—DUTY OF  
MUNICIPALITY

## City or municipality's duty

A (city) (village) (municipality) has a duty to use reasonable care to keep its (streets) (sidewalks) in safe condition.

Violation of this duty is negligence.

---

USE NOTE

This instruction is intended for use in cases where the municipality breaches its common law duty to use reasonable care to keep its streets and sidewalks in safe condition.

## AUTHORITIES

A municipality owes a duty to the public to exercise reasonable care to keep its streets and sidewalks in a reasonably safe condition for pedestrians using them. *See Hansen v. St. Paul*, 298 Minn. 205, 207, 214 N.W.2d 346, 348 (1974); *Bury v. Minneapolis*, 258 Minn. 49, 51, 102 N.W.2d 706, 708 (1960); *Hall v. Anoka*, 256 Minn. 134, 135, 97 N.W.2d 380, 382 (1959). The obligation to repair and maintain public sidewalks is the primary duty of the municipality. The duty cannot be shifted to the abutting occupant or property owner. *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 519–20, 83 N.W.2d 96, 100 (1957). Even an ordinance requiring the abutting occupant or owner to build or keep the sidewalks in proper repair does not exonerate the municipality from its obligation; it merely delegates the duty to such persons as agents of the municipality. *See Donald v. Moses*, 254 Minn. 186, 195, 94 N.W.2d 255, 261 (1959); *Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 83 N.W.2d 96 (1957). The abutting owner is not liable for any defect in the sidewalk unless created by the owner, the owner's agents, or servants. *See Sternitzke v. Donahue's Jewelers*, 249 Minn. 514, 519–20, 83 N.W.2d 96, 100 (1957); *Freeman v. Minneapolis*, 219 Minn. 202, 206, 17 N.W.2d 364, 366 (1945). Regardless of the defect or dangerous condition complained of, or its source, the municipality cannot be held liable, unless it had actual or constructive notice of the defect or dangerous condition and had sufficient time prior to the accident to have made proper repairs or otherwise to have protected the public. *See Fuller v. Mankato*, 248 Minn. 342, 345, 80 N.W.2d 9, 11 (1956); *Johnson v. Nicollet County*, 387 N.W.2d 209, 212 (Minn. Ct. App. 1986).

A municipality is not an insurer of the safe condition of its streets.

See *Baker v. City So. St. Paul*, 198 Minn. 437, 442, 270 N.W. 154, 156 (1936); *Heidemann v. Sleepy Eye*, 195 Minn. 611, 613, 264 N.W. 212, 213 (1935). It may be held liable only if the defect in question is of such a nature that a reasonably prudent person in the exercise of due care might reasonably have anticipated the danger. See *Brittain v. Minneapolis*, 250 Minn. 376, 387, 84 N.W.2d 646, 654 (1957).

The duty to exercise reasonable care is commensurate with the risks and dangers involved. See *Barrett v. Virginia*, 179 Minn. 118, 119, 228 N.W. 350, 350 (1929); *Bieber v. St. Paul*, 87 Minn. 35, 37, 91 N.W. 20, 21 (1902). Thus, a municipality is not charged with responsibility for every mere inequality or irregularity in the surface of the sidewalk. See *Brittain v. Minneapolis*, 250 Minn. 376, 387, 84 N.W.2d 646, 654 (1957). It need only prepare for and anticipate ordinary use, not extraordinary and unanticipated use. See *Rudd v. Bovey*, 252 Minn. 151, 154, 89 N.W.2d 689, 691 (1958); *Tracey v. Minneapolis*, 185 Minn. 380, 382, 241 N.W. 390, 391 (1932).

The municipality's duty is not limited to structural defects. While not generally liable for injuries sustained because of mere slipperiness of its sidewalks, see *Doyle v. City of Roseville*, 524 N.W.2d 461, 463 (Minn. 1994); *Bufkin v. Duluth*, 291 N.W.2d 225, 226 (Minn. 1980); *Teske v. Steele County*, 284 Minn. 559, 560, 170 N.W.2d 234, 235 (1969), it may be held liable for dangerous accumulations of snow and ice, see *Lockway v. Proulx*, 283 Minn. 30, 32, 166 N.W.2d 79, 79 (1969); *Bury v. Minneapolis*, 258 Minn. 49, 51, 102 N.W.2d 706, 708 (1960); *Larson v. Mankato*, 239 Minn. 484, 485-86, 59 N.W.2d 312, 313 (1953); *Squillace v. Mountain Iron*, 223 Minn. 8, 14-16, 26 N.W.2d 197, 202 (1946). The duty may also include protection from falling objects. See *Heidemann v. Sleepy Eye*, 195 Minn. 611, 612, 264 N.W. 212, 213 (1935).

However, where a municipality and its agents operate a municipal auditorium for profit, they have the same duty of care in maintaining the sidewalks leading to the auditorium as a private owner of a similar enterprise. See *Bufkin v. Duluth*, 291 N.W.2d 225, 227 (Minn. 1980).

In *Otis v. Anoka-Hennepin School Dist. No. 11*, 611 N.W.2d 390 (Minn. Ct. App. 2000), the issue was whether the "mere slipperiness" rule applied in a case where a snow accumulation created by shoveling or blowing snow from a municipal sidewalk into an area that was adjacent to the sidewalk constituted an artificial condition sufficient to impose liability on a municipality for mere slipperiness occurring when the accumulated snow melted, ran onto the sidewalk, and froze. The court held that the rule applied, and that liability could not be imposed under the circumstances:

The sidewalk where Otis fell was not obstructed; it was only slippery. It is assumed that the slipperiness was caused when an accumulation of shoveled snow melted, ran onto the sidewalk and froze. But in Minnesota, it would be unrealistic and overly burdensome to hold that the "mere slipperiness" rule does not apply under



these circumstances simply because the accumulation of shoveled snow is an artificial condition created by the school district. Such a rule would require municipalities to not only shovel snow from sidewalks but also to place the shoveled snow in a place where it could not run onto a sidewalk when it melts or to stand ready to remove any ice that forms on the sidewalk when the shoveled snow melts. Even if meeting this requirement were physically possible, any attempt to do so would be prohibitively expensive. Thus, there is no basis to conclude that the “mere slipperiness” rule is inapplicable simply because the slipperiness occurred when the accumulation of shoveled snow in the landscaped area melted, ran onto the sidewalk, and froze.

611 N.W.2d at 394.

The municipality is generally under no duty to render the area outside of a public street safe for travel. *See Briglia v. St. Paul*, 134 Minn. 97, 99, 158 N.W. 794, 795 (1916). Where the condition of the sidewalk necessitates use by pedestrians of the adjoining street, the municipality is obligated to exercise the same degree of care with reference to the street as it must with reference to the sidewalk. *See Squillace v. Mountain Iron*, 223 Minn. 8, 14–15, 26 N.W.2d 197, 202 (1946).

Where the defective or otherwise dangerous condition of the sidewalk is a result of the negligence of the adjoining landowner, and the municipality had sufficient actual or constructive notice to have had an opportunity to remedy the condition, the municipality, as well as the negligent landowner, will be held liable. *See Callahan v. Virginia*, 230 Minn. 55, 58, 40 N.W.2d 841, 842 (1950). For the adjoining landowner’s duty, *see* CIVJIG 85.60.

M.S.A. § 466.03, subd. 4(a), exempts a municipality from liability for “[a]ny claim based on snow or ice conditions on any highway or public sidewalk that does not abut a publicly-owned building or publicly-owned parking lot, except when the condition is affirmatively caused by the negligent acts of the municipality.”

#### Research References

*West’s Key Number Digest*  
Municipal Corporations ⇨763, 771, 822

*Legal Encyclopedias*  
C.J.S., Municipal Corporations §§ 713 to 714, 721, 868, 1582



**CIVJIG 85.65****MUNICIPALITY—DEFECTIVE STREETS OR  
SIDEWALKS—ACTUAL KNOWLEDGE OR  
CONSTRUCTIVE NOTICE****Municipality's duty to warn about or fix defects**

A (city) (village) (municipality) has a duty to warn about or fix defects in its (streets) (sidewalks) if:

1. It either knew or had constructive notice of the defect, and
2. There was a reasonable amount of time either to fix the defect or warn people about it.

**Definition of "constructive notice"**

"Constructive notice" occurs when the defect existed long enough that the (city) (village) (municipality) could reasonably be expected to have found it.

---

**USE NOTE**

This instruction is intended for use in cases where there is an issue as to whether the municipality had either actual knowledge or constructive notice of a defect in its sidewalks or streets.

**AUTHORITIES**

A municipality cannot be held liable for injuries suffered as a result of a defect or dangerous condition existing on a municipal street or sidewalk, unless the municipality had actual or constructive notice of the defect or dangerous condition and sufficient time prior to the accident to have made proper repairs or otherwise protect the public. *See Smith v. Hibbing*, 272 Minn. 1, 3, 136 N.W.2d 609, 610 (1965); *Fuller v. Mankato*, 248 Minn. 342, 345, 80 N.W.2d 9, 11 (1956). A municipality will be deemed to have received constructive notice where the defective condition has continued for such a period of time that the municipality is bound to take notice of its condition. *See Ljungberg v. North Mankato*, 87 Minn. 484, 485–86, 92 N.W. 401, 402 (1902). In determining constructive notice, the trier of fact may also consider the nature of the defect and extent to which the area in question is used. *See* 87 Minn. at 485, 92 N.W. at 402.

For authority as to the general duty of a municipality with respect to the maintenance of its streets and sidewalks for public use, *see* CIVJIG 85.63, Authorities.

**Research References**

*West's Key Number Digest*

Municipal Corporations *§*787, 822(3)

*Legal Encyclopedias*

C.J.S., Municipal Corporations *§§* 721, 736 to 742, 744 to 746, 868

## DUTIES OF OTHER PROPERTY OWNERS

### CIVJIG 85.70

#### INNKEEPER'S DUTY

##### Standard of conduct

(Defendant-proprietor) is required to use reasonable care in operating (his) (her) business.

##### Definition of "reasonable care"

"Reasonable care" is the care that a reasonable person would use in similar circumstances. The failure to use reasonable care is negligence.

##### Definition of "negligence"

"Negligence" is doing something that a reasonable person would not do, or failing to do something a reasonable person would do, in similar circumstances.

##### Deciding negligence

(Proprietor) was negligent if:

1. (Proprietor) was put on notice of the offending person's vicious or dangerous potential by some act or threat, and
2. (Proprietor) had an adequate opportunity to protect the injured person, and
3. (Proprietor) failed to take reasonable steps to protect the injured person.

##### Definition of "propensity"

"Propensity" means having a strong tendency.

## USE NOTE

This instruction is intended for use in cases involving innkeeper's liability. The issue in these cases often arises in cases involving claims against bars for failing to prevent the criminal misconduct of a third person, but the theory covered here is separate from any theory that might be asserted by a claimant under the Civil Damage Act, and it is not limited to cases involving bars.

## AUTHORITIES

This instruction is based on the supreme court's opinion in *Alholm v. Wilt*, 394 N.W.2d 488 (Minn. 1986). The instruction tracks the specific elements of the trial court's instruction in the case, which the supreme court said was "a generally appropriate jury instruction on innkeeper liability." There was a fourth element in the trial court's instruction, however, which stated that "[t]he injury must be foreseeable." In a footnote to its opinion, the supreme court expressed concern over specific instruction on that element:

Although not raised on this appeal, we are troubled by the practice of placing foreseeability within the jury's domain. The foreseeability issue, as a threshold issue, is more properly decided by the court prior to submitting the case to the jury. If the trial court concludes that the innkeeper did not have notice of the person's dangerous propensities, then it must find that the injury would not have been foreseeable to a reasonable innkeeper and thus, no duty to protect arose.

Because foreseeability has nothing to do with proximate cause, we do not believe that the jury should be instructed on the issue. *See, e.g.,* Prosser & Keeton On Torts § 43 at 280–281 (5th ed. 1984). To the extent our prior case law speaks of "foreseeability" as an element of the cause of action, we were only discussing foreseeability in the context of whether a legal duty arises, not as something on which the jury should be instructed.

394 N.W.2d at 491, n.5.

In *Donaldson v. Young Women's Christian Association of Duluth*, 539 N.W.2d 789 (Minn. 1995), a resident of the YWCA committed suicide. The court noted that "[a] legal duty to act for the protection of another person arises when a special relationship exists between the parties . . . . Usually, a special relationship giving rise to a duty to protect is found only on the part of common carriers, innkeepers, possessors of land who hold it open to the public, and persons who have custody of another person under circumstances in which that other person is deprived of normal opportunities of self-protection." 539 N.W.2d at 792.

The court concluded that an innkeeper-guest relationship did not



exist between the decedent and the YWCA, but that even if it did, there would be no liability because there was no duty under the circumstances to guard against self-inflicted harm by a resident. 539 N.W.2d at 792.

**Research References**

*West's Key Number Digest*  
Innkeepers ☞ 10.1 to 10.8

*Legal Encyclopedias*  
C.J.S., Inns, Hotels, and Eating Places §§ 32, 34 to 48, 57

## CIVJIG 85.75

**DUTY OF PARKING RAMP OPERATOR****Responsibilities of a parking ramp owner or operator**

A parking ramp owner or operator must use reasonable care to prevent crime from causing personal harm to customers. Ask what a reasonable owner or operator would do in the same or similar circumstances.

Consider the following factors:

1. The location of the ramp
2. How the ramp is constructed
3. The ease and cost of security measures
4. The likelihood of personal harm happening in the ramp
5. Whether the owner or operator knew or had reason to know of the risk of harm.

**Where the owner or operator is not responsible**

The owner or operator cannot be expected to:

1. Guarantee the safety of all customers or users, or
2. Prevent all criminal activity.

---

**USE NOTE**

This instruction is taken from the Minnesota Supreme Court's opinion in *Erickson v. Curtis Investment Co.*, 447 N.W.2d 165, 169–170 (Minn. 1989), using the language suggested by the court. Although the instruction is limited to an owner or operator of a parking ramp, it could be used as a model for other cases in which the existence of a special relationship justifies the imposition of a duty on a person to use reasonable care to prevent the criminal misconduct of a third person.

## AUTHORITIES

In *Erickson v. Curtis Investment Co.*, 447 N.W.2d 165, 169–170 (Minn. 1989), a case involving an assault in a parking ramp, the court held that the special relationship of the owner or operator to patrons of the ramp justified imposing a duty of care on them to prevent criminal misconduct by third parties. The court also held that the duty should be explained to the jury in the following way:

The operator or owner of a parking ramp facility has a duty to use reasonable care to deter criminal activity on its premises which may cause personal harm to customers. The care to be provided is that care which a reasonably prudent operator or owner would provide under like circumstances. Among the circumstances to be considered are the location and construction of the ramp, the practical feasibility and cost of various security measures, and the risk of personal harm to customers which the owner or operator knows, or in the exercise of due care should know, presents a reasonable likelihood of happening. In this connection, the owner or operator is not an insurer or guarantor of the safety of its premises and cannot be expected to prevent all criminal activity. The fact that a criminal assault occurs on the premises, standing alone, is not evidence that the duty to deter criminal acts has been breached.

447 N.W.2d at 169–170.

**Research References**

*West's Key Number Digest*  
Negligence ⇨1078, 1739

*Legal Encyclopedias*  
C.J.S., Negligence §§ 399, 461 to 462, 539 to 548, 552, 871, 881 to 882

## CIVJIG 85.80

## ADVERSE POSSESSION

**Adverse possession**

A person may acquire title to real property owned by another by adverse possession of that property. In order for a person to obtain (title) (ownership) of property by adverse possession, that person must prove:

1. Possession of the property for 15 years that was:

- (a) actual;
- (b) open;
- (c) hostile;
- (d) continuous; and
- (e) exclusive; [and]

[2. That person must have paid taxes on the property for at least five consecutive years during the period of the adverse possession]

"Actual" possession means an actual entry upon the land in question.

"Open" possession means possession that is visible to a person seeking to exercise his or her rights over the property.

"Hostile" possession means without permission of the record owner and intending to own the property to the exclusion of all others. It does not refer to personal dislike for or physical acts against the owner of the property.

"Continuous" possession means use of the property in the manner in which it was intended without interruption.

"Exclusive" possession means possession with the intention



of excluding others from possessing the property.

---

### USE NOTE

The tax requirement does not apply to actions relating to boundary line disputes, land between a government or platted line and the line established by adverse possession, lands not assessed for taxation. In those cases part 2 of the instruction should not be given. It is bracketed because it will not be in issue in most cases.

Not all actions involving claims of adverse possession trigger a right to a jury trial. An action to recover a specific piece of real estate is an action in law to which the right to a jury trial applies. On the other hand, if a plaintiff in possession of property brings an action to clear title or determine an adverse claim, the action is an equitable one which may be tried by the court. *Denman v. Gans*, 607 N.W.2d 788, 793 (Minn. Ct. App. 2000).

### AUTHORITIES

In order to show adverse possession, “the disseizor must show, by clear and convincing evidence, an actual, open, hostile, continuous, and exclusive possession for the requisite period of time.” *Ehle v. Prosser*, 197 N.W.2d 458, 462 (Minn. 1972). The statutory period of time in Minnesota is 15 years. See M.S.A. § 541.02 (2014).

#### *Actual Possession*

Adverse possession requires an actual entry upon the land in question. See *Washburn v. Cutter*, 17 Minn. 361, 368 (1871). Merely claiming title to the property and paying property taxes is not sufficient to satisfy the actual possession requirement. *Young v. Grieb*, 95 Minn. 396, 397, 104 N.W. 131, 131 (1905). Actual possession can be accomplished by a tenant of the adverse possessor. See *Ramsey v. Glenny*, 45 Minn. 401, 48 N.W. 322 (1891).

Possession of the property must give “unequivocal notice to the true owner that someone [sic] is in possession in hostility to take his title.” *Ganje v. Schuler*, 659 N.W.2d 261, 266 (Minn. Ct. App. 2003) (quoting *Skala v. Lindbeck*, 171 Minn. 410, 413, 214 N.W. 271, 272 (1927)). In other words, the adverse possessor must make his possession known by keeping his “flag flying.” *Id.* (“The disseizor must not only possesses the property, he or she must make that fact known by keeping their ‘flag flying.’”); see also *Stevenson v. Bordt*, No. A09-2222, 2010 WL 4068727 (Minn. Ct. App. Oct. 19, 2010) (“The claimant’s possession must be sufficient to make it known that (a) the claimant possesses the owner’s property adversely and (b) the claimaint ‘keep[s] his flag flying.’”).

#### *Openness*

Open possession means “visible from the surroundings, or visible to

one seeking to exercise his rights.” *Hickerson v. Bender*, 500 N.W.2d 169, 171 (Minn. Ct. App. 1993). To show possession, the disseizor does not have to construct tangible structures on the disputed property. See *Young v. Grieb*, 95 Minn. 396, 397, 104 N.W. 131, 131 (1905). “It is sufficient if ‘visible and notorious acts of ownership have been continuously exercised over the land for the time limited by the statute.’” *Ganje*, 659 N.W.2d at 267 (quoting *Young*, 95 Minn. at 397, 104 N.W. at 131). While improvements to the land, constructing fences, or actual residence on the land are not necessary, such evidence can help demonstrate openness.

Many courts analyze the actual and open requirements together.

#### *Exclusivity*

The requirement of exclusivity is satisfied if “the disseizor possesses the land as if it were his own with the intention of using it to the exclusion of others.” *Ganje*, 659 N.W.2d at 267 (quoting *Ebenhoh v. Hodgman*, 642 N.W.2d 104, 108 (Minn. Ct. App. 2002)). A few intermittent entries by individuals other than the disseizor will not destroy the exclusivity requirement. *Ebenhoh*, 642 N.W.2d at 109.

#### *Continuous*

To acquire title by adverse possession, the property must be continuously used for a period of 15 years. *Ganje*, 659 N.W.2d at 268. If the adverse possession is interrupted, the possession of the property will revert to the holder of the property’s legal title. *Id.* (citing *Romans v. Nadler*, 217 Minn. 174, 178, 14 N.W.2d 482, 485 (1944)).

There is no bright-line test for how much activity constitutes “continuous” possession. Instead, the general rule is that the adverse possessor must use the property as if it were his or her own and in the manner that the land is intended to be used. *Ganje*, 659 N.W.2d at 268 (holding that sporadic use of wooded area was reasonable when that was how the area was normally used); see also *Houdek v. Guyse*, No. A04-711, 2005 WL 406217, at \*2 (Minn. Ct. App. Feb. 22, 2005) (“Where the use of land is seasonal in character, the fact that it was not continuously occupied does not frustrate a finding of adverse possession so long as the use is exclusive.”). Continuous possession does not require actual residence. *Fredericksen v. Henke*, 167 Minn. 356, 359, 209 N.W. 257, 258 (1926) (“To constitute adverse possession, it is not essential that the adverse possessor actually live upon the land which he claims. It is enough that it is occupied and applied to the uses for which it is fit.”). Also, while “no trespassing” signs may help demonstrate that the openness requirement is met, Minnesota has never required the posting of such signs to affirmatively deny title by the true owner. *Ganje*, 659 N.W.2d at 269.

Possession by successive occupants of property may be tacked together for continuity purposes, so long as there is privity between the

occupants. *Ebenhoh*, 642 N.W.2d at 109. Privity requires possession through descent or by transfer of title or possession. *Fredericksen*, 167 Minn. at 360, 209 N.W. at 259. "Possession lost by abandonment or lost by disseisin, and possession taken when a prior occupant abandons or is disseised, cannot be tacked." *Id.* Also, a landlord may be in continuous possession if the property is occupied by a tenant. *Id.* (citing *Kelley v. Green* 142 Minn. 82, 84, 170 N.W. 922, 923 (1919).

### *Hostile*

The final element requires that possession "must be hostile or with an intention to claim the property adverse to the true owner." *Ganje*, 659 N.W.2d at 268. "Hostile" possession means taking possession of the property as if it were the disseizor's own, intending to exclude all others from possessing it. *Id.* "The hostility requirement does not refer to personal animosity or physical overt acts against the record owner of the property." *Ebenhoh*, 642 N.W.2d at 110. Hostility is flexibly determined by "examining the character of possession and the acts of ownership of the occupant." *Id.* at 110-11.

If the use of property was permissive at its inception, it must become adverse to the knowledge of the true owner before any prescriptive rights can arise. *Lechner v. Adelman*, 369 N.W.2d 331, 334 (Minn. Ct. App. 1985). The disseizor's use is presumed to continue as permissive, rather than hostile, until the contrary can be shown. *Id.* "In order to be hostile, possession cannot be permissive, but an owner's passive acquiescence and failure to assert paramount possessory rights do not constitute permission." *Piotrowski v. Bretz*, No. C6-98-85, 1998 WL 613857, at \*2 (Minn. Ct. App. Sept. 15, 1988) (citing *Ehle*, 197 N.W.2d at 463).

"Acquiescence," regardless of what it might mean otherwise, means, when used in this connection, passive conduct on the part of the owner of the servient estate consisting of failure on his part to assert his paramount rights against the invasion thereof by the adverse user. "Permission" means more than mere acquiescence; it denotes the grant of a permission in fact or a license.

*Ehle*, 197 N.W.2d at 463. A close family relationship between the claimant of land and the record owner creates an inference, if not a presumption, that the original possession by the claimant of the other's land was permissive and not adverse. *Wojahn v. Johnson*, 297 N.W.2d 298, 306 (Minn. 1980).

### *Tax Requirement*

M.S.A. § 541.02 states:

No action for the recovery of real estate or the possession thereof shall be maintained unless it appears that the plaintiff, the



plaintiff's ancestor, predecessor, or grantor was seized or possessed of the premises in question within 15 years before the beginning of the action.

Such limitations shall not be a bar to an action for the recovery of real estate assessed as tracts or parcels separate from other real estate, unless it appears that the party claiming title by adverse possession or the party's ancestor, predecessor, or grantor, or all of them together, shall have paid taxes on the real estate in question at least five consecutive years of the time during which the party claims these lands to have been occupied adversely.

The provisions of the preceding paragraph shall not apply to actions relating to the boundary line of lands, which boundary lines are established by adverse possession, or to actions concerning lands included between the government or platted line and the line established by such adverse possession, or to lands not assessed for taxation.

The first paragraph requires 15 years' possession by a disseizor as a prerequisite to claiming title by adverse possession. *Grubb v. State*, 433 N.W.2d 915, 920 (Minn. Ct. App. 1988).

The second paragraph requires that the disseizor have paid the real estate taxes for five consecutive years of the disseizor's 15 years of adverse possession as a prerequisite to claiming title by adverse possession. *Id.* "The legislature intended the tax-payment requirement to apply to actions where the disseizor claims all or substantially all of an assessed tract or parcel." *Id.*

The third paragraph creates three exceptions to the tax-payment requirement of the second paragraph:

- (1) actions relating to boundary lines established by adverse possession,
- (2) actions concerning the land between a government or platted line and the line established by adverse possession, and
- (3) lands not assessed for taxation.

*Id.* Therefore, title does not vest in the adverse possessor if he has not paid taxes on the property for five consecutive years, unless one of the three exceptions applies.

In boundary line cases, if the disseizor has not paid taxes on the property, the burden rests with the disseizor to establish that the boundary exception applies. *Id.* at 919. There is no bright line rule for determining whether the "boundary line" exemption applies. *Compare Grubb*, 433 N.W.2d 915 (holding that 80% of another's land was not a



boundary line dispute), *with Ganje*, 659 N.W.2d 261 (finding that dispute over 9% of property was a boundary dispute), *and Houdek*, 2005 WL 406217 (finding that dispute over 14% of property was a boundary dispute).

## CIVJIG 85.82

## SLANDER OF TITLE

## Slander of title

Slander of title is established if:

1. (Plaintiff) owned the real property in question, and
2. (Defendant) made a false statement concerning the real property, and
3. The false statement was made to others, and
4. The false statement was made with malice, and
5. Making the false statement caused (plaintiff) special damages.

## Malice

A statement is made with "malice" if it is made with knowledge of its falsity or substantial doubts about its truth.

---

USE NOTE

The slander of title must be the cause of special damages. Special damages means pecuniary loss. *See Quevli Farms of Lakefield v. Union Sav. Bank & Trust Co. of Davenport, Iowa*, 178 Minn. 27, 30, 226 N.W. 191, 192 (1929). The malice standard is drawn from CIVJIG 50.40.

## AUTHORITIES

"Utterance of false and malicious statements disparaging the title to property in which one has an estate or interest, if the statements are untrue and cause damage, constitutes slander of title." *Kelly v. First State Bank of Rothsay*, 145 Minn. 331, 332-33, 177 N.W. 347, 347 (1920). The elements required for a slander of title claim are:

- (1) That there was a false statement concerning the real property owned by the plaintiff;
- (2) That the false statement was published to others;
- (3) That the false statement was published maliciously;

- (4) That the publication of the false statement concerning title to the property caused the plaintiff pecuniary loss in the form of special damages.

*Paidar v. Hughes*, 615 N.W.2d 276, 279–80 (Minn. 2000). Filing an instrument that is known to be inoperative constitutes a false statement, and, if done maliciously, constitutes slander of title. *Id.* at 280 (citing *Kelly*, 145 Minn. at 332, 177 N.W. at 347); see also *Navickas v. Quilling*, No. A10-145, 2010 WL 5290552, at \*8 (Minn. Ct. App. Dec. 28, 2010) (“Filing a notice of *lis pendens* can be the basis for a slander-of-title claim if the notice contains false information and the filing is motivated by malice.” (citing *Bly v. Gensmer*, 386 N.W.2d 767, 769 (Minn. Ct. App. 1986))).

The standard to show malice in a slander of title case is not the same as the standard required to prove malice in an action for defamation. *Bridgeplace Assocs., L.L.C. v. Lazniarz*, No. A04-2218, 2005 WL 1869657, at \*7 (Minn. Ct. App. Aug. 9, 2005) (citing *Quevli Farms, Inc. v. Union Sav. Bank & Trust Co.*, 178 Minn. 27, 29, 226 N.W. 191, 191 (1929)). “The element of malice requires a ‘[r]eckless disregard concerning the truth or falsity of a matter . . . despite a high degree of awareness of probable falsity or entertaining doubts as to its truth.’” *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711–12 (Minn. Ct. App. 2007) (quoting *Contract Dev. Corp. v. Beck*, 627 N.E.2d 760, 764 (Ill. App. Ct. 1994)). In other words, malice requires that the disparaging statements be made without a good faith belief in their truth. *Smith v. Toomey*, No. C6-95-2589, 1997 WL 526316, at \*2 (Minn. Ct. App. Aug. 26, 1997); see also *Quevli Farms*, 178 Minn. at 30, 226 N.W. at 192 (stating that plaintiff has the burden of proving that the statements were made without probable cause). Therefore, a slander of title claim will fail if the party acts in good faith and records an instrument that it has a right to file. *Navickas*, 2010 WL 5290522, at \*8 (citing *Kelly*, 145 Minn. at 333, 177 N.W. at 347–48). However, “[a] mere assertion of reliance on an attorney’s advice without disclosure of the basis for that reliance or the facts supporting the attorney’s advice is insufficient to rebut the deliberate filing of a false statement.” *Brickner*, 742 N.W.2d at 712.

Slander of title requires a showing of special damages. See *Paidar*, 615 N.W.2d at 279–80. Attorney fees that are incurred due to a slander of title claim are considered special damages. *Id.* at 281 (finding that attorneys’ fees met the special damages requirement even though there was no “loss of sale” damages).





# PART IV

## DAMAGES

---

### *Table of Categories*

Category 90	Damages
Category 91	Personal Damage
Category 92	Property Damage
Category 94	Punitive Damages
Special Verdict	Forms



## CATEGORY 90

### DAMAGES

---

#### *Table of Instructions*

- CIVJIG 90.10    Compensatory Damages—Personal and Property  
                         Damages—Definition
- CIVJIG 90.15    Damages—Burden of Proof
- CIVJIG 90.20    Compensatory Damages—Personal and Property  
                         Damages—General Instruction
- CIVJIG 90.25    Adjustment of Future Damages—Present Cash  
                         Value
- CIVJIG 90.30    Taxation of Damages
- 

#### INTRODUCTORY NOTE

The law of damages abounds with questions that are both complex and controversial. In addition, it is an area of law that has been subject to frequent revision and amendment, both legislative and judicial. Historically, the damage question has involved only a single figure for all damages sustained. Damages were not normally broken into subelements. However, statutory provisions governing prejudgment interest, discounts of jury verdicts, and collateral sources now necessitate separation of the damages awards in many cases into past and future damages.

**Definition of Damages.** General damages are those that “are the natural, necessary and usual result of the wrongful act or occurrence in question.” *Ray v. Miller Meester Advertising, Inc.*, 684 N.W.2d 404, 407 (Minn. 2004), citing *Phelps v. Commonwealth Land Title Insurance Co.*, 537 N.W.2d 271, at n. 2 (Minn. 1995), quoting Black’s Law Dictionary 390 (6th ed.). Special damages are those “which are the natural, but not the necessary and inevitable result of the wrongful act.” *Ray*, 684 N.W.2d at 407, citing *Phelps*, 537 N.W.2d 271, at n. 2.

**Burden of Proof.** The plaintiff has the burden of proving damages caused by the defendant by a fair preponderance of the evidence. *Rowe v. Munye*, 702 N.W.2d 729, 735 (Minn. 2005); The plaintiff has the burden of proving future damages to a reasonable certainty. The plaintiff must demonstrate with reasonable certainty the nature and probable duration of the injuries sustained. *Canada v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997), citing *Carpenter v. Nelson*, 257 Minn. 424, 101 N.W.2d 918 (1960); and *Lowe v. Armour Packing Co.*, 148

Minn. 464, 182 N.W. 610 (1921). As the supreme court stated in *Pietrzak v. Eggen*, 295 N.W.2d 504, 507 (Minn. 1980), "this rule insures that there is no recovery for damages which are remote, speculative, or conjectural." The court in that case further explained:

However, it is not necessary that the evidence be unequivocal or that it establish future damages to an absolute certainty. Instead, the plaintiff must prove the reasonable certainty of future damages by a fair preponderance of the evidence. In short, the plaintiff is entitled to an instruction on future damages if he or she has shown that such damage is more likely to occur than not to occur.

*Pietrzak*, 295 N.W.2d at 507.

In *Bryson v. The Pillsbury Company*, 573 N.W.2d 718, 721 (Minn. Ct. App. 1998), the court of appeals, relying on *Pietrzak*, framed the issue of the admissibility of future damages as a two part test. "For Bryson to establish her claim for future damages, she must show: (1) that the future harm is more likely than not to occur; and (2) that her future damages are not too speculative." The question of whether damages are too remote or speculative to be submitted to the jury is a question of law for the trial court. "There is no general test of remote and speculative damages, and such matters should usually be left to the judgment of the trial court." *Jackson v. Reiling*, 311 Minn. 562, 563, 249 N.W.2d 896, 897 (1977).

The question of whether damages are too remote or speculative to be submitted to the jury is a question of law for the trial court. "There is no general test of remote and speculative damages, and such matters should usually be left to the judgment of the trial court." *Jackson v. Reiling*, 311 Minn. 562, 563, 249 N.W.2d 896, 897 (1977).

**Collateral Source Payments.** Typically, evidence that a plaintiff has received or will receive payments from an insurer or other collateral source related to an injury or disability is not admissible. M.S.A. § 548.251, subd. 5. M.S.A. § 548.251 instead provides for judicial reduction of a jury verdict by certain collateral sources. The statute defines "collateral sources" to mean:

. . . payments related to the injury or disability in question made to the plaintiff, or on the plaintiff's behalf up to the date of the verdict, by or pursuant to:

(1) a federal, state, or local income disability or worker's compensation act; or other public program providing medical expenses, disability payments, or similar benefits;

(2) health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage; except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or



provided by others, payments made pursuant to the United States Social Security Act, or pension payments;

(3) a contract or agreement of a group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental or other health care services; or

(4) a contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability, except benefits received from a private disability insurance policy where the premiums were wholly paid for by the plaintiff.

Subdivisions 2 and 3 establish the procedures for the reduction:

**Subd. 2.** In a civil action, whether based on contract or tort, when liability is admitted or is determined by the trier of fact, and when damages include an award to compensate the plaintiff for losses available to the date of the verdict by collateral sources, a party may file a motion within ten days of the date of entry of the verdict requesting determination of collateral sources. If the motion is filed, the parties shall submit written evidence of, and the court shall determine:

(1) amounts of collateral sources that have been paid for the benefit of the plaintiff as a result of losses except those for which a subrogation right has been asserted; and

(2) amounts that have been paid, contributed, or forfeited by, or on behalf of, the plaintiff or members of the plaintiff's immediate family for the two-year period immediately before the accrual of the action to secure the right to a collateral source benefit that the plaintiff is receiving as a result of the losses.

**Subd. 3.** (a) The court shall reduce the award by the amounts determined under subdivision 2, clause (1), and offset any reduction in the award by the amounts determined under subdivision 2, clause (2).

(b) If the court cannot determine the amounts specified in paragraph (a) from the written evidence submitted, the court may within ten days request additional written evidence or schedule a conference with the parties to obtain further evidence.

(c) In any case where the claimant is found to be at fault under section 604.01, the reduction required under paragraph (a) must be made before the claimant's damages are reduced under section 604.01, subdivision 1.

Subdivision 4 governs the calculation of attorney fees:

If the fees for legal services provided to the plaintiff are based on a percentage of the amount of money awarded to the plaintiff, the percentage must be based on the amount of the award as adjusted under subdivision 3. Any subrogated provider of a collateral source not separately represented by counsel shall pay the same percentage of attorneys' fees as paid by the plaintiff and shall pay its proportionate share of the costs.

Subdivision 5 provides that "[t]he jury shall not be informed of the existence of collateral sources or any future benefits which may or may not be payable to the plaintiff."

One question that may arise under the collateral source statute has a parallel to a problem that has arisen under the no-fault act. Both concern the appropriate method of reducing a jury verdict. One problem arises when the benefits paid to the plaintiff differ from the damages awarded for the same loss by the jury. A reduction of the jury verdict without distinguishing between types of damages may result in an invasion of damages for which no collateral sources have been paid or are available. See *Tuenge v. Konetski*, 320 N.W.2d 420 (Minn. 1982); *Anderson v. Honaker*, 365 N.W.2d 307 (Minn. Ct. App. 1985); *Fahy v. Templin*, 361 N.W.2d 158 (Minn. Ct. App. 1985), rev. denied (Minn. Apr. 18, 1985).

Evidence of collateral payments, however, may be admissible for impeachment purposes. In *Kroning v. State Farm Automobile Insurance Co.*, 567 N.W.2d 42, 46 (Minn. 1997), the Minnesota Supreme Court, citing *Bartosch v. Lewison*, 413 N.W.2d 530, 532 (Minn. Ct. App. 1987), held that:

. . . when a plaintiff through either the use of misleading statements or outright false statements, falsely conveys to the jury that he or she is destitute or in dire financial straits, the admission of evidence of collateral source payments received by the plaintiff is permitted.

The plaintiff in *Swanson v. Brewster*, 784 N.W.2d 264 (Minn. 2010), was injured in an accident involving his motorcycle and the defendants' car. His health insurer was able to negotiate a forgiveness of a portion of his medical expenses. Following trial, defendants requested the trial court reduce damages by contributions made by his health insurer, including the negotiated discount. The supreme court ruled that "negotiated-discount amounts—amounts a plaintiff is billed by a medical provider but does not pay because the plaintiff's insurance provider negotiated a discount on the plaintiff's behalf—are 'collateral sources' for purposes of the Minnesota collateral-source statute." *Swanson v. Brewster*, 784 N.W.2d 264, 282 (Minn. 2010).

In contrast, in *Renswick v. Wenzel*, 819 N.W.2d 198 (Minn. Ct. App.

2012), the court of appeals held that Medicare payments and Medicare-negotiated discounts were payments made pursuant to the United States Social Security Act. Consequently, “on its plain and unambiguous language, the collateral-source statute expressly excepts payments made under that act from its general rule preventing double-recovery. Minn. Stat. § 548.251, subd. 1(2).” *Renswick v. Wenzel*, 819 N.W.2d 198, 210 (Minn. Ct. App. 2012).

**Prejudgment Interest.** M.S.A. § 549.09 governs the award of prejudgment interest, and reads as follows:

**Subdivision 1.** (a) When the judgment is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator or arbitrator as provided in clause (c) and added to the judgment.

(b) Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in clause (c) from the time of the commencement of the action or a demand for arbitration, or the time of a written settlement demand, whichever occurs first, except as provided herein. The action must be commenced within two years of a written notice of claim for interest to begin to accrue from the time of the notice of claim. If either party serves a written offer of settlement, the other party may serve a written acceptance or a written counteroffer within 30 days. After that time interest on the judgment shall be calculated by the judge or arbitrator in the following manner. The prevailing party shall receive interest on any judgment from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim, or as to special damages from when the special damages were incurred, if later, until the time of verdict, award, or report only if the amount of its offer is closer to the judgment or award than the amount of the opposing party's offer. If the amount of the losing party's offer was closer to the judgment or award than the prevailing party's offer, the prevailing party shall receive interest only on the amount of the settlement offer or the judgment or award, whichever is less, and only from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim, or as to special damages from when the special damages were incurred, if later, until the time the settlement offer was made. Subsequent offers and counteroffers supersede the legal effect of earlier offers and counteroffers. For the purposes of clause (2), the amount of settlement offer must be allocated between past and future damages in the same proportion as determined by the trier of fact. Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest shall not be awarded on the following: \* \* \* .

(2) judgments or awards for future damages.

**Apportionment, Aggravation, and Mitigation.** Claims relating



to apportionment, aggravation, and mitigation all raise difficult issues concerning the divisibility of damages. A defendant may, for example, assert that it is responsible for only a portion of plaintiff's losses because damages can be apportioned among defendants and the plaintiff. Alternatively, or additionally, a defendant may claim that its alleged negligence at most aggravated an existing injury, and it ought to be held responsible only for that portion of damages that reflects the extent of aggravation. A defendant may also claim that the plaintiff is responsible for some portion of his or her own injury as a result of failure to mitigate. Each of these three situations poses potential problems, particularly in light of the comparative fault statute.

The Comparative Fault Act has a specific provision governing unreasonable failure to avoid aggravating an injury or to mitigate damages. That amendment reads as follows:

Evidence of unreasonable failure to avoid aggravating an injury or to mitigate damages may be considered only in determining the damages to which the claimant is entitled. It may not be considered in determining the cause of an accident.

The Committee has taken the position that this amendment should have no impact on the special verdict forms that are submitted to the jury in cases where unreasonable failure to avoid aggravating an injury or to mitigate damages is in issue. Instead, the jury should be instructed to take mitigation issues into account when calculating the amount of plaintiff's damages. *See* CIVJIG 91.45. If CIVJIG 91.45 is given, then CIVJIG 25.10, the contributory negligence instruction, should be revised so as to exclude from that instruction the unreasonable failure to avoid or mitigate damages. Conversely, if CIVJIG 25.10 includes unreasonable failure to avoid or mitigate damages, then CIVJIG 91.45 should not be given.

It is a question of law for the court to determine whether damages are capable of apportionment. The burden of proving that the damages are capable of being separated lies with each defendant who contends that those damages can be separated. Once the trial court finds that the damages can be apportioned, the question of actual apportionment is a question of fact for the jury. *Canada v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997), citing *Mathews v. Mills*, 288 Minn. 16, 20–21, 178 N.W.2d 841, 844–845 (1970). *See also* Restatement (Second) of Torts § 434, cmt. d (1965). The burden of apportioning damages remains, at all times, with the defendant. *Canada*, 567 N.W.2d at 507–508. *See* CIVJIG 15.20 and CIVJIG 91.45. In cases where preexisting injuries are aggravated in an accident, however, the defendant is required to pay only for the damages over and above those that would have occurred as a result of the preexisting injury had the accident not occurred. *Rowe v. Munye*, 702 N.W.2d 729, 736 (Minn. 2005).



**CIVJIG 90.10****COMPENSATORY DAMAGES—PERSONAL AND  
PROPERTY DAMAGES—DEFINITION**

Question(s) —, —, and — in the verdict form (is) (are) the damages question(s).

**Answer each question independently**

[You must answer these questions regardless of your answers to the other questions on the verdict form. Your verdict is not complete until these damages questions are answered.]

When you decide damages, do not consider the possible effect of your answers to other questions.

**Damages are money**

The term “damages” means a sum of money that will fairly and adequately compensate a person who has been (injured) (harmed). Damages may include past and future (injury) (harm). It must be proved that future (injury) (harm) is reasonably certain to occur.

---

**AUTHORITIES**

General damages are those that “are the natural, necessary and usual result of the wrongful act or occurrence in question.” *Ray v. Miller Meester Adver., Inc.*, 684 N.W.2d 404, 407 (Minn. 2004), citing *Phelps v. Commonwealth Land Title Insurance Co.*, 537 N.W.2d 271, at n. 2 (Minn. 1995), quoting Black’s Law Dictionary 390 (6th ed.). Special damages are those “which are the natural, but not the necessary and inevitable result of the wrongful act.” *Phelps*, 537 N.W.2d at n.2.

The plaintiff has the burden of proving future damages to a reasonable certainty. As the supreme court stated in *Pietrzak v. Eggen*, 295 N.W.2d 504, 507 (Minn. 1980), “this rule insures that there is no recovery for damages which are remote, speculative, or conjectural.” The court in that case further explained:

However, it is not necessary that the evidence be unequivocal or that it establish future damages to an absolute certainty. Instead,

the plaintiff must prove the reasonable certainty of future damages by a fair preponderance of the evidence. In short, the plaintiff is entitled to an instruction on future damages if he or she has shown that such damage is more likely to occur than not to occur.

*Pietrzak*, 295 N.W.2d at 507.

In *Bryson v. The Pillsbury Company*, 573 N.W.2d 718, 721 (Minn. Ct. App. 1998), the court of appeals, relying on *Pietrzak*, framed the issue of the admissibility of future damages as a two part test. "For Bryson to establish her claim for future damages, she must show: (1) that the future harm is more likely than not to occur; and (2) that her future damages are not too speculative." The question of whether damages are too remote or speculative to be submitted to the jury is a question of law for the trial court. "There is no general test of remote and speculative damages, and such matters should usually be left to the judgment of the trial court." *Jackson v. Reiling*, 311 Minn. 562, 563, 249 N.W.2d 896, 897 (1977).

### Research References

*West's Key Number Digest*

Damages ◊15 to 57.60, 216

*Legal Encyclopedias*

C.J.S., Damages §§ 21 to 38, 42 to 45, 53 to 74, 89 to 93, 356 to 357, 363 to 370;  
Parent and Child § 344; Torts § 26

## CIVJIG 90.15

## DAMAGES—BURDEN OF PROOF

## Definition of “burden of proof”

A party asking for damages must prove the nature, extent, duration, and consequences of his or her (injury) (harm).

You must not decide damages based on speculation or guess.

---

USE NOTE

The question of whether damages are too remote or speculative to be submitted to the jury is a question of law for the trial court. “There is no general test of remote and speculative damages, and such matters should usually be left to the judgment of the trial court.” *Jackson v. Reiling*, 311 Minn. 562, 563, 249 N.W.2d 896, 897 (1977).

## AUTHORITIES

The plaintiff has the burden of proving damages caused by the defendant by a preponderance of the evidence. *Rowe v. Munye*, 702 N.W.2d 729, 735 (Minn. 2005).

The plaintiff has the burden of proving future damages to a reasonable certainty. The plaintiff must demonstrate with reasonable certainty the nature and probable duration of the injuries sustained. *Canada v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997), citing *Carpenter v. Nelson*, 257 Minn. 424, 101 N.W.2d 918 (1960); and *Lowe v. Armour Packing Co.*, 148 Minn. 464, 182 N.W. 610 (1921). In *Pietrzak v. Eggen*, 295 N.W.2d 504, 507 (Minn. 1980), the court stated, “it is not necessary that the evidence be unequivocal or that it establish future damages to an absolute certainty.” See also *Busch v. Busch Constr., Inc.*, 262 N.W.2d 377, 399 (Minn. 1977).

## Research References

*West's Key Number Digest*  
Damages ⇨163

*Legal Encyclopedias*  
C.J.S., Damages §§ 254 to 264, 301

**CIVJIG 90.20****COMPENSATORY DAMAGES—PERSONAL AND  
PROPERTY DAMAGES—GENERAL INSTRUCTION****Deciding the amount of damages**

In answering question(s) —, —, —, and —, you are to decide the amount of money that will fairly and adequately compensate (name) for (his) (her) past and future (injury) (harm).

**Items to include**

You may award damages for the following items if the evidence shows they resulted from the (accident) (collision) (event):

[Insert the elements from CIVJIG 91.10–91.35, 91.50–91.65, 91.75, and 92.10, as appropriate to the case.]

**[No consideration of other sources of payment]**

Do not consider whether (plaintiff) has received or may receive payment from other sources.]

---

**USE NOTE**

Traditionally, the damage question has involved only a single figure for all damages sustained. Damages were not normally broken into subelements. However, statutory provisions governing prejudgment interest, discounts of jury verdicts, and collateral sources now necessitate separation of damages awards into past and future damages.

Typically, evidence that a plaintiff has received or will receive payments from an insurer or other collateral source related to an injury or disability is not admissible. M.S.A. § 548.251, subd. 5 (2014). Evidence of such payments, however, may be admissible for impeachment purposes. In *Kroning v. State Farm Automobile Insurance Co.*, 567 N.W.2d 42, 46 (Minn. 1997), the Minnesota Supreme Court, citing *Bartosch v. Lewison*, 413 N.W.2d 530, 533 (Minn. Ct. App. 1987), held that:

. . . when a plaintiff, through either the use of misleading statements or outright false statements, falsely conveys to the jury that



he or she is destitute or in dire financial straits, the admission of evidence of collateral source payments received by the plaintiff is permitted.

Questions concerning payment from other sources may arise during the course of trial or during jury deliberations. In that event, the Committee recommends that this language be included in the instruction. This language appears as part of CIVJIG 91.10, Items of Personal Damage—Past Damages—Bodily and Mental Harm. This bracketed language is more appropriately a part of this instruction.

### AUTHORITIES

**Collateral Source Calculations.** M.S.A. § 548.251 concerns damage calculations made as a result of collateral source payments, and provides for the reduction of a jury verdict by certain collateral sources. The statute defines “collateral sources” to mean:

. . . payments related to the injury or disability in question made to the plaintiff, or on the plaintiff's behalf up to the date of the verdict, by or pursuant to:

(1) a federal, state, or local income disability or worker's compensation act; or other public program providing medical expenses, disability payments, or similar benefits;

(2) health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage; except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others, payments made pursuant to the United States Social Security Act, or pension payments;

(3) a contract or agreement of a group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental or other health care services; or

(4) a contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability, except benefits received from a private disability insurance policy where the premiums were wholly paid for by the plaintiff.

Subdivisions 2 and 3 establish the procedures for the reduction:

**Subd. 2.** In a civil action, whether based on contract or tort, when liability is admitted or is determined by the trier of fact, and when damages include an award to compensate the plaintiff for losses available to the date of the verdict by collateral sources, a party

may file a motion within ten days of the date of entry of the verdict requesting determination of collateral sources. If the motion is filed, the parties shall submit written evidence of, and the court shall determine:

(1) amounts of collateral sources that have been paid for the benefit of the plaintiff as a result of losses except those for which a subrogation right has been asserted; and

(2) amounts that have been paid, contributed, or forfeited by, or on behalf of, the plaintiff or members of the plaintiff's immediate family for the two-year period immediately before the accrual of the action to secure the right to a collateral source benefit that the plaintiff is receiving as a result of the losses.

**Subd. 3.** (a) The court shall reduce the award by the amounts determined under subdivision 2, clause (1), and offset any reduction in the award by the amounts determined under subdivision 2, clause (2).

(b) If the court cannot determine the amounts specified in paragraph (a) from the written evidence submitted, the court may within ten days request additional written evidence or schedule a conference with the parties to obtain further evidence.

(c) In any case where the claimant is found to be at fault under section 604.01, the reduction required under paragraph (a) must be made before the claimant's damages are reduced under section 604.01, subdivision 1.

Subdivision 4 governs the calculation of attorney fees:

If the fees for legal services provided to the plaintiff are based on a percentage of the amount of money awarded to the plaintiff, the percentage must be based on the amount of the award as adjusted under subdivision 3. Any subrogated provider of a collateral source not separately represented by counsel shall pay the same percentage of attorneys' fees as paid by the plaintiff and shall pay its proportionate share of the costs.

Subdivision 5 provides that "[t]he jury shall not be informed of the existence of collateral sources or any future benefits which may or may not be payable to the plaintiff."

One question that may arise under the collateral source statute has a parallel to a problem that has arisen under the no-fault act. Both concern the appropriate method of reducing a jury verdict. One problem arises when the benefits paid to the plaintiff differ from the damages

awarded for the same loss by the jury. A reduction of the jury verdict without distinguishing between types of damages may result in an invasion of damages for which no collateral sources have been paid or are available. See *Tuenge v. Konetski*, 320 N.W.2d 420 (Minn. 1982); *Anderson v. Honaker*, 365 N.W.2d 307 (Minn. Ct. App. 1985); *Fahy v. Templin*, 361 N.W.2d 158 (Minn. Ct. App. 1985), rev. denied (Minn. Apr. 18, 1985).

**Prejudgment Interest.** M.S.A. § 549.09 governs the award of prejudgment interest, and reads as follows:

**Subdivision 1.** (a) When a judgment or award is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict, award, or report until judgment is finally entered shall be computed by the court administrator or arbitrator as provided in clause (c) and added to the judgment or award.

(b) Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in clause (c) from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first, except as provided herein. The action must be commenced within two years of a written notice of claim for interest to begin to accrue from the time of the notice of claim. If either party serves a written offer of settlement, the other party may serve a written acceptance or a written counteroffer within 30 days. After that time, interest on the judgment or award shall be calculated by the judge or arbitrator in the following manner. The prevailing party shall receive interest on any judgment or award from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim, or as to special damages from the time when special damages were incurred, if later, until the time of verdict, award, or report only if the amount of its offer is closer to the judgment or award than the amount of the opposing party's offer. If the amount of the losing party's offer was closer to the judgment or award than the prevailing party's offer, the prevailing party shall receive interest only on the amount of the settlement offer or the judgment or award, whichever is less, and only from the time of commencement of the action or a demand for arbitration, or the time of a written notice of claim, or as to special damages from when the special damages were incurred, if later, until the time the settlement offer was made. Subsequent offers and counteroffers supersede the legal effect of earlier offers and counteroffers. For the purposes of clause (2), the amount of settlement offer must be allocated between past and future damages in the same proportion as determined by the trier of fact. Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest shall not be awarded on the following: \* \* \*

(2) judgments or awards for future damages . . . .



**Research References**

*West's Key Number Digest*

Damages ☞ 15 to 57.60, 216

*Legal Encyclopedias*

C.J.S., Damages §§ 21 to 38, 42 to 45, 53 to 74, 89 to 93, 356 to 357, 363 to 370;

Parent and Child § 344; Torts § 26



**CIVJIG 90.25****ADJUSTMENT OF FUTURE DAMAGES—PRESENT CASH VALUE****Present cash value of damages**

After finding the dollar value of future damages for:

- [a. Loss of future earning capacity]
- [b. Future health care expenses],

you must then find the present cash value of this amount, and award only the present cash value. This is called “adjusting,” and is based on inflation and the fact that invested money earns interest.

**Steps in adjusting**

The following steps are involved in adjusting:

1. Decide if (name) is entitled to damages for:
  - [a. Lost/reduced future earning capacity]
  - [b. Future health care expenses].
2. If so, decide the amount of these future damages in today’s dollars. In doing this, you may also consider whether inflation will increase the:
  - [a. Value of future earning capacity]
  - [b. Future health care expenses].
3. Decide for how long in the future (name) will:
  - [a. Experience lost/reduced future earning capacity]
  - [b. Incur future health care expenses].

4. Decide how much money (name) needs if (he) (she) invests it now through the time in the future when (he) (she) will need it for:

- [a. Lost or reduced future earning capacity]
- [b. Future health care expenses].

### **Damages that must be adjusted**

You must adjust damages only for:

- [1. Loss/reduction of future earning capacity]
- [2. Future health care expenses].

### **Damages not to be adjusted**

You must not adjust damages for:

1. Future pain,
2. Future disability,
3. Future emotional distress,
4. Any past damages.

---

### **USE NOTE**

In 1985, the legislature enacted a discount statute, M.S.A. § 604.07. That statute was repealed in 1988, making the discount issue once again subject to judicial decision.

### **AUTHORITIES**

This instruction is based on AMI 2219 of the Arkansas Model Jury Instructions. Loss of future earnings and the cost of future medical attendance must be adjusted to reflect present worth. Minnesota permits trial courts to instruct juries on the discount of future damages. *Stenvik v. Constant*, 502 N.W.2d 416, 421 (Minn. Ct. App. 1993); *Olsen v. Special School District No. 1*, 427 N.W.2d 707, 714 (Minn. Ct. App. 1988). See *Ahlstrom v. Minneapolis, St. Paul & Sault Ste. Marie R. Co.*, 244 Minn. 1, 68 N.W.2d 873 (1955). Courts may instruct and counsel may argue that the jury may consider inflation. See *Busch v. Busch Constr., Inc.*,

262 N.W.2d 377, 396 (Minn. 1977); *Ossenfort v. Associated Milk Producers, Inc.*, 254 N.W.2d 672, 684 (Minn. 1977). Future pain and suffering is not subject to the discount, however. See *Busch v. Busch Constr., Inc.*, 262 N.W.2d 377, 397 (Minn. 1977). The instruction refers to “adjustment,” rather than “discount,” because recalculation of future damages may not always result in a negative figure, if inflation is taken into consideration.

#### Research References

*West's Key Number Digest*  
Damages ⇨226

*Legal Encyclopedias*  
C.J.S., Damages §§ 380 to 382

## CIVJIG 90.30

## TAXATION OF DAMAGES

[The Committee recommends no instruction.]

---

AUTHORITIES

In *Anunti v. Payette*, 268 N.W.2d 52, 55 (Minn. 1978), the supreme court held that it was not error to deny a request that a jury be instructed that a recovery will be exempt from federal income taxes. Following *Anunti*, the United States Supreme Court decided *Norfolk & Western Ry. Co. v. Liepelt*, 444 U.S. 490, 100 S.Ct. 755, 62 L.Ed.2d 689 (1980), rehearing denied, 445 U.S. 972, 100 S.Ct. 1667, 64 L.Ed.2d 250 (1980), holding that it is error to refuse to give an instruction concerning the nontaxability of damages. In *Grant v. Duluth*, 672 F.2d 677, 683 (8th Cir. 1982), the Eighth Circuit, applying Minnesota law, noted that the Minnesota Supreme Court's decision in *Anunti* preceded the *Liepelt* decision, and that federal district courts should give the *Liepelt* instruction, in the absence of a state decision to the contrary.

In *Hanson v. Chicago, R.I. & Pac. R.R. Co.*, 345 N.W.2d 736 (Minn. 1984), the Minnesota Supreme Court considered the taxation issue in a Federal Employers Liability Act case. In that case, the court held that it was error to give a counter-*Liepelt* instruction.

In the absence of a clear Minnesota Supreme Court decision requiring a *Liepelt*-type instruction in cases other than Federal Employers Liability Act cases, the Committee recommends no instruction.



## CATEGORY 91

### PERSONAL DAMAGE

---

#### *Table of Instructions*

- CIVJIG 91.10 Items of Personal Damage—Past Damages—  
Bodily and Mental Harm
  - CIVJIG 91.15 Items of Personal Damage—Past Damages—  
Medical Supplies, Hospital and Medical Expense
  - CIVJIG 91.20 Items of Personal Damage—Past Damages—Loss  
of Earnings
  - CIVJIG 91.25 Items of Personal Damage—Future Damages—  
Bodily Harm and Mental Harm
  - CIVJIG 91.30 Items of Personal Damage—Future Damages—  
Medical Supplies, Hospital and Medical Expense
  - CIVJIG 91.35 Items of Personal Damage—Future Damages—  
Loss of Earning Capacity
  - CIVJIG 91.40 Items of Personal Damage—Pre-Existing  
Condition—Aggravation
  - CIVJIG 91.41 Items of Personal Damage—Pre-Existing  
Condition—Eggshell plaintiff Doctrine
  - CIVJIG 91.45 Mitigation of Damages—Person
  - CIVJIG 91.47 Mitigation of Damages—Loss of Earnings
  - CIVJIG 91.50 Items of Personal Damage—Spouse's Damages for  
Injury to Spouse
  - CIVJIG 91.55 Items of Personal Damage—Parent's Damages for  
Injury to Child
  - CIVJIG 91.60 Items of Personal Damage—Child's Action—Loss  
of Future Earning Capacity
  - CIVJIG 91.65 Items of Personal Damage—Child's Action—  
Future Medical Supplies, Hospital and Medical  
Expense
  - CIVJIG 91.70 Emancipation of a Minor
  - CIVJIG 91.75 Measure of Damages—Wrongful Death
  - CIVJIG 91.80 Wrongful Death—Negligence of plaintiff's  
Decedent or of One of Several Beneficiaries
  - CIVJIG 91.85 Life Expectancy Tables
-

**CIVJIG 91.10****ITEMS OF PERSONAL DAMAGE—PAST  
DAMAGES—BODILY AND MENTAL HARM****Past damages for bodily and mental harm**

Items to include for past damages for bodily and mental harm:

1. Pain
2. Disability
3. [Disfigurement]
4. [Embarrassment]
5. Emotional distress

(name) has experienced up to the time of your verdict.

It is difficult to put an exact value on these items that are not necessarily decided on a daily or hourly basis.

**Factors to consider**

You should consider:

1. The type, extent, and severity of the injuries
2. How painful the injuries were
3. The treatment and pain involved in that treatment
4. The length of time the injury or harm lasted
5. Any other factors you think are relevant.

**[No consideration of other sources of payment]**

Do not consider whether (plaintiff) has received or may receive payment from other sources.]\*

---

**USE NOTE**

\*Questions concerning payment from other sources may arise during the course of trial or during jury deliberations. In that event, the Committee recommends that the last bracketed paragraph of this instruction be given.

**AUTHORITIES**

Factors relevant in determining damages for bodily injury include past and future pain, permanent disability, life expectancy, the effect on the claimant's enjoyment of the amenities of life, and the degree of disfigurement. See *Dawydowycz v. Quady*, 300 Minn. 436, 440, 220 N.W.2d 478, 481, (1974). A claimant in a personal injury action is entitled to damages for suffering, physical injuries, and disfigurement. See *Krueger v. Henschke*, 210 Minn. 307, 309, 298 N.W. 44, 45 (1941).

There is no exact yardstick by which damages for pain and suffering can be awarded. See *Berg v. Gunderson*, 275 Minn. 420, 432, 147 N.W.2d 695, 703 (1966). *Per diem* arguments may be misleading and, therefore, may not be used as a yardstick for determining the reasonableness of the amount awarded for damages, but the rule does not bar the use of the mathematical formula for purely illustrative purposes. See *Christy v. Saliterman*, 288 Minn. 144, 170, 179 N.W.2d 288, 304 (1970); *Boutang v. Twin City Motor Bus Co.*, 248 Minn. 240, 251, 80 N.W.2d 30, 39 (1956). However, the *per diem* argument is proscribed in cases involving damage awards for pain and suffering and for generally non-quantifiable compensatory awards. See *Busch v. Busch Constr., Inc.*, 262 N.W.2d 377, 399 (Minn. 1977).

Recovery for emotional harm that does not arise from personal injury is compensable if the plaintiff proves the elements of intentional infliction of emotional distress, see CIVJIG 60.75 (Intentional Infliction of Emotional Distress), or is in the zone of danger created by the defendant's negligence and exhibits physical manifestations caused by the emotional distress. See *Engler v. Illinois Farmers Insurance Co.*, 706 N.W.2d 764, 767 (Minn. 2005); *K.A.C. v. Benson*, 527 N.W.2d 553, 557 (Minn. 1995); *Stadler v. Cross*, 295 N.W.2d 552, 553 (Minn. 1980); *Okrina v. Midwestern Corp.*, 282 Minn. 400, 404, 165 N.W.2d 259, 262 (1969). In *Engler v. Illinois Farmers Insurance Co.*, 706 N.W.2d 764, 767 (Minn. 2005), the supreme court held that "a plaintiff may recover damages for distress caused by fearing for another's safety or witness-

ing serious injury to another” if the plaintiff proves she “(1) was in the zone of danger of physical impact; (2) had an objectively reasonable fear for her own safety; (3) had severe emotional distress with attendant physical manifestations; and (4) stands in a close relationship to the third-party victim.”

**Research References***West's Key Number Digest*

Damages 31, 57.1 to 57.60, 97, 102, 216

*Legal Encyclopedias*

C.J.S., Damages §§ 92 to 93, 163 to 164, 356 to 357, 363 to 370; Parent and Child § 344



**CIVJIG 91.15****ITEMS OF PERSONAL DAMAGE—PAST  
DAMAGES—MEDICAL SUPPLIES, HOSPITAL AND  
MEDICAL EXPENSE****Past damages for health care expenses**

Past damages for health care expenses may include:

1. Medical supplies
2. Hospitalization
3. Health care services of every kind

necessary for treatment up to the time of your verdict.

[Include the reasonable value of the services of attendants if needed for (name)'s care.]

[Determine the amount for diagnostic x-rays separately.]

---

**USE NOTE**

Recovery may be allowed for all expenses and the reasonable value of services made necessary by the harm, including expenses for substitute help. *See* Restatement (Second) of Torts § 924(c), cmt. f (1979). If recovery of expenses for hiring substitute services is to be allowed, recovery for loss of working time must be reduced to reflect the recovery for substitute services. *See* Restatement (Second) of Torts § 924(c) cmt. f (1979).

Where the court is required to reduce a damages award by the plaintiff's percentage of fault and certain collateral source payments paid or payable to the plaintiff, section 548.36, subd. 3(c), requires the reductions to be made as follows:

(c) In any case where the claimant is found to be at fault under section 604.01, the reduction required under paragraph (a) must be made before the claimant's damages are reduced under section 604.01, subdivision 1.

In cases involving claims under the Minnesota No Fault Act, the court should use CIVJIG 65.50 and the corresponding verdict form. The

Act imposes limitations on the right to recover damages in a tort action. These tort thresholds necessitate instructing the jury on the definitions of disfigurement, permanent injury, and sixty-day disability.

### AUTHORITIES

Expenses for medical treatment have long been recognized to be proper items of damage, *see Goin v. Premo*, 196 Minn. 74, 77, 264 N.W. 219, 221 (1935); and *Wells v. Minneapolis Baseball & Athletic Ass'n*, 122 Minn. 327, 333, 142 N.W. 706, 708 (1913), even though a doctor or a member of the claimant's family provides those services without expectation of payment. *Hueper v. Goodrich*, 314 N.W.2d 828, 831 (Minn. 1982); *Wells v. Minneapolis Baseball & Athletic Ass'n*, 122 Minn. 327, 333–34, 142 N.W. 706, 708 (1913).

The measure of damages for a tort is not affected by the existence of insurance, and evidence thereof is inadmissible. *See Hueper v. Goodrich*, 314 N.W.2d 828, 831 (Minn. 1982).

### Research References

*West's Key Number Digest*  
Damages ⇨43, 101, 216(9)

*Legal Encyclopedias*  
C.J.S., Damages §§ 62, 66 to 70, 151 to 153, 356 to 357, 363 to 370; Parent and Child § 344

## CIVJIG 91.20

**ITEMS OF PERSONAL DAMAGE—PAST  
DAMAGES—LOSS OF EARNINGS****Past damages for loss of earnings**

Past damages for loss of earnings may include:

1. Earnings
2. Salary
3. Value of working time

lost as a result of the injury, from the time of injury to date.

[Do not consider the fact that (name) actually received (his) (her) salary for all or part of the time in deciding the value of (name)'s lost working time.]

---

**USE NOTE**

The collateral source statute, M.S.A. § 548.251, sets out the order in which reductions of a plaintiff's damages award are to be made where the plaintiff is at fault. Where the court is required to reduce a damages award by the plaintiff's percentage of fault and certain collateral source payments paid or payable to the plaintiff, section 548.251, subd. 3(c), requires the reductions to be made as follows:

(c) In any case where the claimant is found to be at fault under section 604.01, the reduction required under paragraph (a) must be made before the claimant's damages are reduced under section 604.01, subdivision 1.

**Research References**

*West's Key Number Digest*  
Damages ⇨ 37, 99, 216(8)

*Legal Encyclopedias*  
C.J.S., Damages §§ 53 to 55, 141, 356 to 357, 363 to 370; Parent and Child § 344; Torts § 26

## CIVJIG 91.25

**ITEMS OF PERSONAL DAMAGE—FUTURE  
DAMAGES—BODILY HARM AND MENTAL HARM****Future damages for bodily and mental harm**

Future damages for bodily and mental harm may include:

1. Pain
2. Disability
- [3. Disfigurement]
- [4. Embarrassment]
5. Emotional distress

(name) is reasonably certain to experience in the future.

It is difficult to put an exact value on these items that are not necessarily decided on a daily or hourly basis.

**Factors to consider**

You should consider:

1. The type, extent, and severity of the injuries
2. How painful the injuries are
3. The treatment and pain involved in that treatment
4. The length of time the injury or harm is likely to last
5. Any other factors you think are relevant.

---

**AUTHORITIES**

The plaintiff has the burden of proving future damages to a reasonable certainty. As the supreme court stated in *Pietrzak v. Eggen*, 295



N.W.2d 504, 507 (Minn. 1980), "this rule insures that there is no recovery for damages which are remote, speculative, or conjectural." The court in that case further explained:

However, it is not necessary that the evidence be unequivocal or that it establish future damages to an absolute certainty. Instead, the plaintiff must prove the reasonable certainty of future damages by a fair preponderance of the evidence. In short, the plaintiff is entitled to an instruction on future damages if he or she has shown that such damage is more likely to occur than not to occur.

*Pietrzak*, 295 N.W.2d at 507. In *Bryson v. The Pillsbury Company*, 573 N.W.2d 718, 721 (Minn. Ct. App. 1998), the court of appeals, relying on *Pietrzak*, framed the issue of the admissibility of future damages as a two-part test. "For Bryson to establish her claim for future damages, she must show: (1) that the future harm is more likely than not to occur; and (2) that her future damages are not too speculative." The question of whether damages are too remote or speculative to be submitted to the jury is a question of law for the trial court. "There is no general test of remote and speculative damages, and such matters should usually be left to the judgment of the trial court." *Jackson v. Reiling*, 311 Minn. 562, 563, 249 N.W.2d 896, 897 (1977). There can be no recovery for future damages that are remote, speculative, or conjectural, but proof to an absolute certainty is not required. *Austin v. Rosecke*, 240 Minn. 321, 322, 61 N.W.2d 240, 242 (1953).

#### Research References

##### *West's Key Number Digest*

Damages ⇨31, 57.1 to 57.60, 97, 98, 102, 216

##### *Legal Encyclopedias*

C.J.S., Damages §§ 92 to 93, 163 to 164, 356 to 357, 363 to 370; Parent and Child § 344

## CIVJIG 91.30

**ITEMS OF PERSONAL DAMAGE—FUTURE  
DAMAGES—MEDICAL SUPPLIES, HOSPITAL AND  
MEDICAL EXPENSE****Future damages for health care expenses**

Future damages for health care expenses may include:

1. Medical supplies
2. Hospitalization
3. Health care services of every kind

reasonably certain to be necessary for treatment in the future.

[Include the reasonable value of the services of attendants if needed for (name)'s care.]

---

**AUTHORITIES**

In *Pietrzak v. Eggen*, 295 N.W.2d 504, 507 (Minn. 1980), the plaintiff introduced expert testimony that over half of individuals with knee injuries identical to those of the plaintiff would have to undergo further reconstructive surgery. The supreme court ruled that the plaintiff was entitled to an instruction on future medical expenses, because the plaintiff had shown that "such damage is more likely to occur than not to occur." *Pietrzak*, 295 N.W.2d at 507.

**Research References**

*West's Key Number Digest*  
Damages ⇨43, 101, 216(9)

*Legal Encyclopedias*  
C.J.S., Damages §§ 62, 66 to 70, 151 to 153, 356 to 357, 363 to 370; Parent and Child § 344

**CIVJIG 91.35****ITEMS OF PERSONAL DAMAGE—FUTURE DAMAGES—LOSS OF EARNING CAPACITY****Loss of future earning capacity**

If you find that future disability is reasonably certain to occur, you may consider the effect of that disability on (name)'s future earning capacity. Consider what the person is able to earn in the future. Consider whether (name)'s future earning capacity has been destroyed or reduced. You may decide damages for this loss or reduction of future earning capacity.

**Factors to consider**

In determining the amount of future damages for loss of earning capacity, you should consider:

1. Age
2. Health
3. Skill
4. Training
5. Experience
6. Work habits
7. Length of loss of earning capacity (temporary or permanent)
8. Years of earning expectancy compared to (name)'s life expectancy.

---

**AUTHORITIES**

Impairment of earning capacity is an item of general damage that does not require specific proof of actual earnings or income, either before

or after the injury. Because future damages such as this are impossible to prove with absolute certainty, the damages are recoverable if they are reasonably certain to occur. Before an instruction on loss of future earning capacity is given, the plaintiff must prove the reasonable certainty of future damages by a fair preponderance of the evidence. See *Kwapien v. Starr*, 400 N.W.2d 179, 183 (Minn. Ct. App. 1987). An award for impairment of earning capacity should be based on an evaluation of factors such as age, life expectancy, health, or income, before or after the injury.

The measure of future damages with respect to earnings is loss of earning *capacity*, not loss of earnings. See *Riley v. Luedloff*, 253 Minn. 447, 452, 92 N.W.2d 806, 810 (1958). A claimant in a personal injury action may recover for loss of future earning capacity, even though there is no intention to resume gainful employment, see *Le May v. Minneapolis St. Ry. Co.*, 245 Minn. 192, 199–200, 71 N.W.2d 826, 831 (1955); or the claimant is working at home and receiving no wages see *Stenshoel v. Great Northern Ry.*, 142 Minn. 14, 16, 170 N.W. 695, 696 (1919).

#### Research References

*West's Key Number Digest*  
Damages ☞38, 100, 216(8)

*Legal Encyclopedias*  
C.J.S., Damages §§ 53, 56, 144 to 148, 356 to 357, 363 to 370; Parent and Child § 344; Torts § 26



## CIVJIG 91.40

**ITEMS OF PERSONAL DAMAGE—PRE-EXISTING  
CONDITION—AGGRAVATION****Aggravation of pre-existing disability or pre-existing medical  
condition**

A person who has a pre-existing disability or medical condition at the time of an accident is entitled to damages for aggravation of that pre-existing disability or condition directly caused by the (collision) (accident) (event) (defendant's negligence/fault).

Damages are limited to those that are over and above the damages that would have normally followed from the pre-existing disability or medical condition without the (collision) (accident) (event) (defendant's negligence/fault).

---

**USE NOTE**

There are two primary instructions involving pre-existing disabilities or medical conditions. CIVJIG 91.40 applies in cases where the plaintiff has a pre-existing disability or medical condition that is aggravated in an accident or by the defendant's negligence or fault. CIVJIG 91.41 applies in cases where the plaintiff has a pre-existing disability or medical condition that makes the plaintiff unusually susceptible to injury. Only one of the instructions should be used, and then, only where the facts of the case make it applicable.

This instruction should be given in cases where the plaintiff has a pre-existing disability or medical condition and there is evidence that that disability or medical condition was aggravated by the defendant's fault. In such cases, the defendant is obligated to compensate the plaintiff "for the aggravation, but not for the preexisting injury or condition." *Rowe v. Munye*, 702 N.W.2d 729, 741 (Minn. 2005).

This instruction should not be used where there is no issue concerning aggravation of a preexisting disability or condition. *Morlock v. St. Paul Guardian Insurance Co.*, 650 N.W.2d 154, 160–61 (Minn. 2002).

CIVJIG 91.41 should be given in cases where the so-called "eggshell plaintiff" doctrine applies. That doctrine applies in cases where a person who has a pre-existing disability or medical condition suffers an injury that a normal person would not have suffered or suffered as severely in the same accident. CIVJIG 91.40 should not be given in those cases.

The Minnesota Supreme Court acknowledged in *Rowe v. Munye*, 702 N.W.2d 729, 741–42 (Minn. 2005) that it is conceivable that a case could involve both aggravation of a preexisting injury and an injury made more severe because a person is more susceptible to injury. In that event, the instructions in CIVJIG 91.40 and 91.41 will have to be merged. See CIVJIG 91.41, Authorities, for a suggested instruction covering merger.

Which of the alternatives—(collision) (accident) (event) (defendant's negligence/fault)—is used will depend on the case. The last alternative—(defendant's negligence/fault)—is included to cover enhanced injury cases, where the defendant that manufactured the allegedly defective product may not have been responsible for the initial injury sustained by the plaintiff in an accident, but only for aggravation caused by its own fault.

### AUTHORITIES

In cases where preexisting injuries are aggravated in an accident, the defendant is required to pay only for the damages over and above those that would have occurred as a result of the preexisting injury had the accident not occurred. *Rowe v. Munye*, 702 N.W.2d 729, 736 (Minn. 2005); *Schore v. Mueller*, 290 Minn. 186, 189, 186 N.W.2d 699, 700 (1971); *Nelson v. Twin City Motor Bus Co.*, 239 Minn. 276, 280, 58 N.W.2d 561, 563 (1953). The plaintiff has the burden of proving damages. The burden of proof does not shift to the defendant. *Rowe*, 702 N.W.2d at 736; *Luebner v. Sterner*, 493 N.W.2d 119, 122 (Minn. 1992). In *Rowe*, the court stated that in cases where there is confusing or conflicting testimony in a case involving aggravation, and jury indecision or disagreement “could lead to the jury’s inability to separate damages, we believe, rather than placing all uncertainty on the defendant, the better option is for the jury to make a rough apportionment so that the plaintiff receives fair compensation for her injuries.” 702 N.W.2d at 742. The court also noted that it would be an exceptional case where there is no basis for apportionment. 702 N.W.2d at 742.

Cases involving aggravation of preexisting injuries are distinguishable from cases where the burden of apportionment is shifted to jointly and severally liable defendants. *Rowe*, 702 N.W.2d 729, 736; *Canada by Landy v. McCarthy*, 567 N.W.2d 496, 507–08 (Minn. 1997); *Mathews v. Mills*, 288 Minn. 16, 22, 178 N.W.2d 841, 845 (1970). In those cases, the defendants bear the burden of apportioning damages. See CIVJIG 15.20 and Authorities.

In some cases, there may be no issue concerning aggravation of a pre-existing disability or condition. Instead, the plaintiff’s theory may be that the accident in question was the sole cause of his or her injuries and the defendant’s theory may be that all of the damages the plaintiff seeks to recover were a product of the pre-existing disability or condition. Where there is no issue concerning aggravation of a preexist-

ing disability or condition it is inappropriate to give the instruction in CIVJIG 91.40. *Morlock v. St. Paul. Guardian Insurance Co.*, 650 N.W.2d 154, 160–61 (Minn. 2002) (plaintiff took the position that all injuries and damages were due to an automobile accident while defendant took the position that they were due to a pre-existing condition).

**Research References**

*West's Key Number Digest*  
Damages ⇨33, 213

*Legal Encyclopedias*  
C.J.S., Damages §§ 92, 360



**CIVJIG 91.41****ITEMS OF PERSONAL DAMAGE—PRE-EXISTING  
CONDITION—EGGSHELL PLAINTIFF DOCTRINE****Pre-existing disability or pre-existing medical condition**

A person who has a pre-existing disability or medical condition at the time of (a collision) (an accident) (an event) is still entitled to recover damages for injuries directly caused by the (collision) (accident) (event).

The person is entitled to recover even though the injuries or damages differ from the injuries or damages the (collision) (accident) (event) would have caused a person without that pre-existing disability or medical condition.

---

**USE NOTE**

This instruction covers the so-called “eggshell plaintiff” doctrine. It applies in cases where a person who has a pre-existing disability or medical condition suffers an injury that a normal person would not have suffered or suffered as severely in the same accident.

This instruction differs from CIVJIG 91.40, which applies in cases where a person who has a pre-existing disability or medical condition suffers an injury that aggravates the pre-existing disability or medical condition.

**AUTHORITIES**

The court in *Rowe v. Mune*, 702 N.W.2d 729, 740 (Minn. 2005) also noted that while the eggshell plaintiff doctrine “makes the defendant responsible for all damages that the defendant legally caused even if the plaintiff was more susceptible to injury because of a preexisting condition or injury,” it “is not a mechanism to shift the burden of proof to the defendant,” and that “the eggshell plaintiff still has to prove the nature and probable duration of the injuries sustained.”

In cases where the plaintiff suffers from a preexisting disability or medical condition, the plaintiff is entitled to recover for any aggravation of that injury or condition, even if the results are more serious than they would have been had the injured person not had that condition or injury. *Ross v. Great Northern Ry. Co.*, 101 Minn. 122, 125, 111 N.W. 951, 953 (1907); *Watson v. Rheinderknecht*, 82 Minn. 235, 238–39, 84 N.W. 798, 799–800 (1901). The court in *Rowe* referred to the rule as the



“eggshell plaintiff doctrine,” 702 N.W.2d at 741, and endorsed its earlier statement of the rule in *Ross v. Great Northern Ry.*, 101 Minn. 122, 125, 111 N.W. 951, 953 (1907), that “[w]here a tort is committed, and injury may reasonably be anticipated, the wrongdoer is liable for the proximate results of that injury, although the consequences are more serious than they would have been, had the injured person been in perfect health.” 702 N.W.2d at 741. The impact of the doctrine is that “it makes the defendant responsible for all damages that the defendant legally caused even if the plaintiff was more susceptible to injury because of a preexisting condition or injury.” 702 N.W.2d at 741. The plaintiff has the burden of proving the extent of his or her injuries, however. 702 N.W.2d at 741.

In *Rowe*, 702 N.W.2d at 741–42 (Minn. 2005), the supreme court noted that it is conceivable that a case could involve both aggravation of a preexisting injury and an injury made more severe because a person is more susceptible to injury. The court indicated that in such a case additional instructions may be necessary according to the guidelines set out in *Waits v. United Fire & Casualty Co.*, 572 N.W.2d 565, 578 (Iowa 1997). Following is a suggested instruction incorporating both the eggshell plaintiff and aggravation instructions. The instruction could be used in a case where the plaintiff is unusually susceptible to injury because of a pre-existing medical condition or disability and that condition or disability also is a contributing factor to ongoing pain and disability, but the condition or disability is also aggravated in an accident or by the defendant’s fault:

**Pre-existing disability or medical condition—susceptible plaintiff**

A person who has a pre-existing disability or medical condition at the time of an accident is entitled to damages for aggravation of that pre-existing disability or condition directly caused by the (collision) (accident) (event) (defendant’s negligence/fault), even though the injuries and damages are different from or greater than the injuries or damages the (collision) (accident) (event) (defendant’s negligence/fault) would have caused a person without that pre-existing disability or medical condition.

Damages are limited to those that are over and above the damages that would have normally followed from the pre-existing disability or medical condition without the (collision) (accident) (event) (defendant’s negligence/fault).

**Research References**

*West’s Key Number Digest*  
Damages ⇨33, 213

*Legal Encyclopedias*  
C.J.S., Damages §§ 92, 360

## CIVJIG 91.45

## MITIGATION OF DAMAGES—PERSON

**Duty to act reasonably in caring for an injury**

A person who is injured has a duty to act reasonably in getting treatment and care for his or her (injury) (harm).

He or she is limited to those damages that he or she would have experienced if he or she had acted reasonably in getting treatment and care, [including a surgical operation that a reasonable person would undergo].

[If you find that:

1. Surgery would improve (name)'s injuries, and
2. A reasonable person would have had surgery in these circumstances,

take these facts into account in deciding the amount of damages.]

---

**USE NOTE**

M.S.A. § 604.01, subd. 1a of the Comparative Fault Act reads as follows:

Evidence of unreasonable failure to avoid aggravating an injury or to mitigate damages may be considered only in determining the damages to which the claimant is entitled. It may not be considered in determining the cause of an accident.

The Committee has taken the position that this amendment should have no impact on the special verdict forms that are submitted to the jury in cases where unreasonable failure to avoid aggravating an injury or to mitigate damages is in issue. Rather, the issue should be handled pursuant to this instruction. *See* CIVJIG 28.15, Authorities.

If CIVJIG 91.45 is given, then CIVJIG 25.10, the contributory negligence instruction, should be revised so as to exclude from that instruction the unreasonable failure to avoid or mitigate damages. Conversely, if the jury is asked to apportion negligence that includes an unreasonable failure to avoid aggravating an injury or to mitigate damages, then CIVJIG 91.45 should not be given.

## AUTHORITIES

A person injured by the wrongful conduct of another has a duty to mitigate damages by acting reasonably in the care and treatment of such injury. Failure by the claimant to exercise such reasonable care will defeat or reduce his recovery. See *Kesich v. Oliver Iron Mining Co.*, 188 Minn. 173, 177, 246 N.W. 672, 673 (1933); *Beck v. Chicago, M. & St. P. Ry. Co.*, 134 Minn. 363, 365, 159 N.W. 831, 832 (1916); *Patterson v. Blatti*, 133 Minn. 23, 27, 157 N.W. 717, 718 (1916). However, the injured party is not required to submit to a major surgical operation. He may choose to bear his affliction and be compensated for it. See *Butler v. Whitman*, 193 Minn. 150, 152, 258 N.W. 165, 166 (1934); *Gibbs v. Almstrom*, 145 Minn. 35, 37, 176 N.W. 173, 174 (1920); *Otos v. Great Northern Ry. Co.*, 128 Minn. 283, 287, 150 N.W. 922, 923 (1915); *Maroney v. Minneapolis & St. L. Ry. Co.*, 123 Minn. 480, 483, 144 N.W. 149, 150 (1913). If a reasonable person would undergo an operation, the jury may consider that as a factor in determining the amount of damages. See *Couture v. Novotny*, 297 Minn. 305, 313, 211 N.W.2d 172, 176 (1973).

The Comparative Fault Act includes in the definition of "fault" the "unreasonable failure to avoid an injury or to mitigate damages." M.S.A. § 604.01, subd. 1a. While failure to mitigate damages is included in the definition of fault, and may be considered by the trier of fact in determining what percentage of fault to assign to the plaintiff, in some situations it may be preferable to instruct on mitigation, rather than including mitigation in the comparative fault question. See *Christopherson v. Independent School Dist. No. 284*, 354 N.W.2d 845 (Minn. Ct. App. 1984); CIVJIG 28.15, Authorities. However, in no event should failure to mitigate be the subject of instructions under both CIVJIG 28.15 and 91.45.

## Research References

*West's Key Number Digest*  
Damages ⇨62(2), 214

*Legal Encyclopedias*  
C.J.S., Damages §§ 46 to 52, 168, 360



## CIVJIG 91.47

## MITIGATION OF DAMAGES—LOSS OF EARNINGS

## Duty to act reasonably to limit loss of earnings

A person has a duty to act reasonably to (prevent) (reduce) his or her loss of earnings.

He or she is limited to those damages that he or she would have experienced if he or she had acted reasonably (in finding new employment).

---

USE NOTE

The Minnesota Comparative Fault Act provides in part that:

Evidence of unreasonable failure to avoid aggravating an injury or to mitigate damages may be considered only in determining the damages to which the claimant is entitled. It may not be considered in determining the cause of an accident.

M.S.A. § 604.01, subd. 1a. Consistent with its position regarding damages for personal injury, the Committee has taken the position that this provision of the Act should have no impact on the special verdict forms that are submitted to the jury in cases where unreasonable failure to mitigate is an issue. Rather, the issue should be handled pursuant to this instruction. *See* CIVJIG 28.15, Authorities.

## AUTHORITIES

A person injured by the wrongful conduct of another has a duty to mitigate his or her loss of earnings or other financial damages. A jury may consider an unreasonable failure to mitigate when determining the amount of damages to which a plaintiff is entitled. M.S.A. § 604.01, subd. 1a. In the contract setting, this obligation is sometimes referred to as the doctrine of “avoidable consequences.” In *Feges v. Perkins Restaurants, Inc.*, 483 N.W.2d 701, 709 (Minn. 1992), for example, the court held that the doctrine of avoidable consequences was applicable to the plaintiff’s claim for wrongful discharge. Similarly, in *Soules v. Independent School District No. 518*, 258 N.W.2d 103, 106 (Minn. 1977), the court stated that the failure to make a reasonable effort to pursue employment or the unreasonable refusal of employment may reduce a plaintiff’s recovery of damages.

## Research References

*West’s Key Number Digest*  
Damages ⇨62(2), 214



*Legal Encyclopedias*

C.J.S., Damages §§ 46 to 52, 168, 360

## CIVJIG 91.50

**ITEMS OF PERSONAL DAMAGE—SPOUSE'S  
DAMAGES FOR INJURY TO SPOUSE****[Damages for injury to a wife]**

When a wife is injured, she has a claim for damages, and her husband may also have a claim.

The husband's claim for damages may include:

1. The loss of (wife)'s services and companionship he would have received in the usual course of married life up to the date of trial
2. The value of (wife)'s services and companionship he is reasonably certain to lose in the future.]

**[Damages for injury to a husband]**

When a husband is injured, he has a claim for damages, and his wife may also have a claim.

The wife's claim for damages may include:

1. The loss of (husband)'s services and companionship she would have received in the usual course of married life up to the date of trial
2. The value of (husband)'s services and companionship she is reasonably certain to lose in the future.]

---

**AUTHORITIES**

The instruction reflects the Minnesota Supreme Court's decision in *Busch v. Busch Constr., Inc.*, 262 N.W.2d 377, 402 (Minn. 1977), holding that a wife is not relieved by M.S.A. § 519.05 (1984) of the obligation to pay for her necessities.

**Research References**

*West's Key Number Digest*

Damages ⌘99, 127.72, 216(8); Husband and Wife ⌘209, 235(3)

*Legal Encyclopedias*

C.J.S., Damages §§ 141, 356 to 357, 363 to 370; Husband and Wife § 115; Parent and Child § 344

**CIVJIG 91.55****ITEMS OF PERSONAL DAMAGE—PARENT'S  
DAMAGES FOR INJURY TO CHILD****Parent's damages for injury to a child**

When a child is injured, the child has a claim for (his) (her) (injuries) (harm). (His) (her) (father) (mother) may also have a claim.

Parents' damages may include:

1. The reasonable value of medical supplies, hospital services, and health care services necessary in caring for the child
2. The loss of (child)'s services the (father) (mother) would have received up to the date of trial
3. The value of the child's working time lost as a result of the injury from the time of injury to date

[Do not consider the fact that (child) actually received his or her salary for all or part of the time in deciding lost value of the earning capacity.]

4. The value of the services the (father) (mother) is reasonably certain to lose in the future until (child) reaches the age of 18 years
5. The value of the loss or reduction of (child)'s future earning capacity the (father) (mother) is reasonably certain to experience until (child) reaches the age of 18 years.

**Parent's future damages for the loss or reduction of a child's earning capacity**

In deciding the amount of future damages for the loss or reduction of the child's future earning capacity until age 18, you should consider:



1. Age
2. Health
3. Skill
4. Training
5. Experience
6. Work habits
7. Length of loss of earning capacity (temporary or permanent).

---

#### USE NOTE

If the child reached the age of 18 years or was emancipated before trial, recovery is limited to that date. If the evidence shows the child has been emancipated or could be emancipated before reaching the age of 18 years, this factor must be added to the instruction in limiting the period of time for which the parent can recover future damages. An instruction on emancipation of a minor should also be given if the evidence raises a fact question on this issue.

See Authorities to CIVJIG 91.20, concerning loss of earnings, CIVJIG 91.30, dealing with future medical expenses, and CIVJIG 91.35, dealing with loss of future earning capacity.

#### AUTHORITIES

M.S.A. §§ 144.341—144.347 provides that minors living apart from their parents or guardians, with or without their consent, and managing their own financial affairs, and minors who have been married or borne a child, may consent to medical treatment and are financially responsible for that treatment.

In *Faber v. Roelofs*, 298 Minn. 16, 25, 212 N.W.2d 856, 862 (1973), the supreme court noted the right of the responsible parents to recover for their child's medical expenses:

This court has long recognized that the responsible parent of an injured child has a right of action for the injured child's medical expenses . . . Although the parent's action is subject to any defenses that could be urged against the child, . . . the parent's action and the child's action are essentially separate.

Also see *Eichten v. Central Minnesota Cooperative Power Ass'n*, 224

Minn. 180, 194–95, 28 N.W.2d 862, 871–72 (1947); *Father A v. Moran*, 469 N.W.2d 503, 506 (Minn. Ct. App. 1991).

A minor has no action for loss of a parent's consortium. *See Salin v. Kloempken*, 322 N.W.2d 736 (Minn. 1982).

#### Research References

##### *West's Key Number Digest*

Damages Ⓔ99, 127.72, 216(8); Parent and Child Ⓔ7

##### *Legal Encyclopedias*

C.J.S., Damages §§ 141, 356 to 357, 363 to 370; Parent and Child §§ 327, 329 to 344

**CIVJIG 91.60****ITEMS OF PERSONAL DAMAGE—CHILD'S  
ACTION—LOSS OF FUTURE EARNING CAPACITY****Child's damages for loss of future earning capacity**

You may consider the value of the total or partial future earning capacity of (name of child) that (he) (she) is reasonably certain to lose after (he) (she) reaches age 18.

In deciding the amount of future damages, you should consider:

1. Age
2. Health
3. Skill
4. Training
5. Experience
6. Work habits
7. Length of loss of earning capacity (temporary or permanent)
8. Years of earning of (name of child) compared to (his) (her) life expectancy.

---

**USE NOTE**

If the evidence shows that the child has been emancipated or is likely to be emancipated before the age of 18 years, this factor must be added to the instruction in fixing the beginning of the period of the loss or impairment of future earning capacity. An instruction on emancipation of a minor should also be given if the evidence raises a fact question as to this issue.

**AUTHORITIES**

Under M.S.A. § 540.08, an action may be maintained on behalf of a

minor by the minor's parent, the minor's natural guardian, or guardian ad litem appointed under Minn.R.Civ.P., Rule 17.02, to recover for injuries sustained by the minor child. In such an action, the minor is entitled to recover for loss of future earning capacity and future medical expenses to be sustained after emancipation or attaining the age of majority. The child's claim is separate from the parents' claim for medical and hospital expenses and loss of the child's earnings and services. *Saylor v. Sass*, 258 Minn. 300, 104 N.W.2d 36 (1960). Furthermore, the judgment in such an action is a bar to any subsequent action on behalf of the minor or by the minor after reaching majority. 258 Minn. at 300, 104 N.W.2d at 36. However, recovery under M.S.A. § 540.08 is not a bar to a parent's recovery for loss of the child's wages and services and for medical and hospital expenses personally incurred for treatment of the injured child. 258 Minn. at 300, 104 N.W.2d at 36.

#### Research References

*West's Key Number Digest*

Damages ⇨38, 100, 216(8)

*Legal Encyclopedias*

C.J.S., Damages §§ 53, 56, 144 to 148, 356 to 357, 363 to 370; Parent and Child § 344; Torts § 26



**CIVJIG 91.65****ITEMS OF PERSONAL DAMAGE—CHILD'S  
ACTION—FUTURE MEDICAL SUPPLIES, HOSPITAL  
AND MEDICAL EXPENSE****Child's damages for health care expenses**

Damages for health care expenses may include:

1. Medical supplies
2. Hospitalization
3. Health care services of every kind.

These must be reasonable and necessary for treatment in the future.

[Include the reasonable value of the services of attendants if needed for (name of child)'s care in the future.]

---

**USE NOTE**

If the child reached the age of 18 years or was emancipated before trial, recovery is for the period from that date.

**AUTHORITIES**

A minor may recover for future medical and hospital expenses to be sustained after reaching the age of majority or becoming emancipated. In addition, there is authority to the effect that the reasonable value of necessary medical services and supplies reasonably certain to be required for the care of the minor from the time of trial until the minor reaches his majority or becomes emancipated should be treated as part of the minor's recovery, rather than as a part of the parent's recovery. *See, e.g., Armentrout v. Virginian Ry. Co.*, 72 F.Supp. 997, 1002 (S.D.W. Va.1947), reversed on other grounds, 166 F.2d 400 (4th Cir. 1948); *Rockwood v. Lansburgh*, 109 Cal.App. 581, 586, 293 P. 792, 794 (1930); *Clarke v. Eighth Ave. R. Co.*, 238 N.Y. 246, 251, 144 N.E. 516, 518 (1924). The Committee is of the opinion that this rule, which provides greater protection for the minor and is not prohibited by existing Minnesota case law, represents the better view.

M.S.A. §§ 144.341–144.347 provide that minors living apart from

their parents or guardians, with or without the consent of the parents or guardians, and managing their own financial affairs, and any minor who has been married or borne a child, may consent to medical treatment and are financially responsible for that treatment.

In *Faber v. Roelofs*, 298 Minn. 16, 25, 212 N.W.2d 856, 862 (1973), the supreme court noted the right of the responsible parents to recover for their child's medical expenses:

This court has long recognized that the responsible parent of an injured child has a right of action for the injured child's medical expenses . . . Although the parent's action is subject to any defenses that could be urged against the child, . . . the parent's action and the child's action are essentially separate.

Also see *Eichten v. Central Minnesota Cooperative Power Ass'n*, 224 Minn. 180, 194–95, 28 N.W.2d 862, 871–72 (1947); *Father A v. Moran*, 469 N.W.2d 503, 506 (Minn. Ct. App. 1991).

#### Research References

*West's Key Number Digest*

Damages ⇨43, 101, 216(9)

*Legal Encyclopedias*

C.J.S., Damages §§ 62, 66 to 70, 151 to 153, 356 to 357, 363 to 370; Parent and Child § 344

## CIVJIG 91.70

## EMANCIPATION OF A MINOR

## Definition of "emancipation"

"Emancipation" occurs when the (father) (mother) (guardian) gives up his or her right to the child's services and his or her right to control the child.

Emancipation may be stated directly or implied.

[Marriage emancipates a child.]

---

AUTHORITIES

Complete emancipation releases the child from the custody and control of the parents and destroys the filial relation. *Lufkin v. Harvey*, 131 Minn. 238, 240, 154 N.W. 1097, 1098 (1915). See also *In re Fiihr*, 289 Minn. 322, 326, 184 N.W.2d 22, 25 (1971). Emancipation consists of a surrender by the child's parents of the right to the child's services and of the right to control the child's person. *Taubert v. Taubert*, 103 Minn. 247, 249, 114 N.W. 763, 764 (1908). If either of these elements is missing, there is no complete emancipation. *Lufkin v. Harvey*, 131 Minn. 238, 241, 154 N.W. 1097, 1098 (1915). Emancipation may be express or implied. *In re Fiihr*, 289 Minn. 322, 326, 184 N.W.2d 22, 25 (1971). *City of Minneapolis v. Orono*, 212 Minn. 7, 9, 2 N.W.2d 149, 150 (1942).

Marriage emancipates a minor. *State ex rel. Scott v. Lowell*, 78 Minn. 166, 168, 80 N.W. 877, 878 (1899).

## Research References

*West's Key Number Digest*  
Infants ⇨9, 10

*Legal Encyclopedias*  
C.J.S., Infants §§ 153 to 155

**CIVJIG 91.75****MEASURE OF DAMAGES—WRONGFUL DEATH****Money value of damages**

When you consider damages for (claimant)(s), determine an amount of money that will fairly and adequately compensate (claimant)(s) for the losses (he) (she) (they) suffered as the result of this death.

You should consider what (name of deceased) would have provided to the (claimant)(s) if (he) (she) (they) had lived.

**Factors to consider**

You should consider:

1. (His) (Her) contributions in the past
2. (His) (Her) life expectancy at the time of (his) (her) death
3. (His) (Her) health, age, habits, talents, and success
4. (His) (Her) occupation
5. (His) (Her) past earnings
6. (His) (Her) likely future earning capacity and prospects of bettering (himself) (herself) had (he) (she) lived
7. (His) (Her) personal living expenses (cost of supporting the child)
8. (His) (Her) legal obligation to support the (surviving spouse) (next of kin) and the likelihood that (he) (she) would have fulfilled that obligation
9. All reasonable expenses incurred for a funeral and burial (etc.), and all reasonable expenses for support due to (his) (her) last sickness, including



necessary medical and hospital expenses incurred after and as a result of the injuries causing death

- [10. The probability of (name of decedent)'s paying the debt owed by \_\_\_\_ to \_\_\_\_]
- 11. The counsel, guidance, and aid (he) (she) would have given (claimant)(s)
- [12. The advice, comfort, assistance, companionship, and protection that (name of decedent) would have given if (he) (she) had lived].

[Give CIVJIG 91.85, where appropriate.]

### **Lost time together**

Decide the length of time those related might be expected to survive together. You should compare the life expectancy of (name of decedent) with the life expectancy of each claimant.

Take into account only the amount of time the two being compared would be expected to survive together.

Base your money damages for each claimant on the shorter life expectancy of the two being compared.

### **Items to exclude**

Do not include amounts for:

- 1. [Punishing the defendant]
- 2. [Grief or emotional distress of the surviving spouse and the next of kin], or
- 3. [For the pain and suffering of \_\_\_\_ before (his) (her) death].

### **Factors to exclude**

Do not be influenced by the fact that:

1. [The (surviving spouse) (next of kin) (may have received) (may get) money or other property from (name)'s estate], or
2. [The (surviving spouse) (next of kin) (may collect) (has collected) insurance or workers' compensation benefits because of (name)'s death], or
3. [The surviving spouse has remarried], or
4. [The minor children have been emancipated], or
5. [There is no legal obligation to support the next of kin].

You must determine the total amount of money that will fairly and adequately compensate the (claimant)(s) for the damages suffered as the result of this death.

[I will divide the damages among the (claimants).]

---

#### AUTHORITIES

M.S.A. § 573.02, subd. 1, governs the measure of damages in a wrongful death action. It provides that:

When death is caused by the wrongful act or omission of any person or corporation, the trustee appointed as provided in subdivision 3 may maintain an action therefor if the decedent might have maintained an action, had the decedent lived, for an injury caused by the wrongful act or omission. An action to recover damages for a death caused by the alleged professional negligence of a physician, surgeon, dentist, hospital or sanitarium, or an employee of a physician, surgeon, dentist, hospital or sanitarium shall be commenced within three years of the date of death, but in no event shall be commenced beyond the time set forth in section 541.076. An action to recover damages for a death caused by an intentional act constituting murder may be commenced at any time after the death of the decedent. Any other action under this section may be commenced within three years after the date of death provided that the action must be commenced within six years after the act or omission. The recovery in the action is the amount the jury deems fair and just in reference to the pecuniary loss resulting from the death, and shall be for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death. The court then determines the proportionate

pecuniary loss of the persons entitled to the recovery and orders distribution accordingly. Funeral expenses and any demand for the support of the decedent allowed by the court having jurisdiction of the action, are first deducted and paid. Punitive damages may be awarded as provided in section 549.20.

If an action for the injury was commenced by the decedent and not finally determined while living, it may be continued by the trustee for recovery of damages for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death. The court on motion shall make an order allowing the continuance and directing pleadings to be made and issues framed as in actions began under this section.

In an action for wrongful death, an award of damages is to compensate only for the "pecuniary loss" the decedent's beneficiaries will suffer as a result of his death. See *Fussner v. Andert*, 261 Minn. 347, 352-53, 113 N.W.2d 355, 359 (1962). Punitive damages were not allowed, see *Eisert v. Greenberg Roofing & Sheet Metal Co.*, 314 N.W.2d 226 (Minn. 1982) prior to a 1983 amendment to the statute. Punitive damages are now expressly allowed in a wrongful death action, provided the requirements of M.S.A. § 549.20 are met. See CIVJIG 94.10.

An award of damages may include compensation for loss of comfort, assistance, and companionship. See *Martz v. Revier*, 284 Minn. 166, 170 N.W.2d 83 (1969). The award should not include an amount for wounded feelings, or pain and suffering of the decedent. See 284 Minn. at 166, 170 N.W.2d at 83; *Hutchins v. St. Paul, M. & M. Ry. Co.*, 44 Minn. 5, 46 N.W. 79 (1890). It is clear that "pecuniary loss" does include counsel, guidance, advice, assistance, and protection the beneficiaries may be deprived of due to the death of the decedent. See *Fussner v. Andert*, 261 Minn. 347, 352-53, 113 N.W.2d 355, 359 (1961).

In *Wynkoop v. Carpenter*, 574 N.W.2d 422, 427 (Minn. 1998), the supreme court reaffirmed *Martz v. Revier*, 284 Minn. 166, 173, 284 Minn. 166, 170 N.W.2d 83, 87 (1969), in holding "that for the purpose of the wrongful death statute, 'next of kin' means blood relatives who are members of the class from which beneficiaries are chosen under the intestacy statute." Decision as to the dollar amount of the "pecuniary loss" caused by the decedent's death is left largely to the jury. *Noe v. Great Northern Ry. Co.*, 168 Minn. 259, 209 N.W. 905 (1926). In *Noe*, the court pointed out that in determining pecuniary loss:

The jury must consider the occupation of the decedent, the income derived therefrom, his health, age, probable duration of life helpfully indicated by mortality tables, habits of industry or frugality, success in life in the past and the amount of aid in money or services which he customarily furnished to the beneficiaries, and the jury may also consider the reasonable probability of such person bettering himself and becoming able to command a larger income.

168 Minn. at 262, 209 N.W. at 906; see *Schroht v. Voll*, 245 Minn. 114,



123–24, 71 N.W.2d 843, 849 (1955); *Thoirs v. Pounsford*, 210 Minn. 462, 467, 299 N.W. 16, 19 (1941). In making a determination as to life expectancy, the jury is not bound by mortality tables but may consider such other factors as health, habits, occupation, and surroundings. See *Thoirs v. Pounsford*, 210 Minn. 462, 467, 299 N.W. 16, 19 (1941). In assessing damages, the jury should consider the present worth of the expected future contributions. 210 Minn. at 462, 299 N.W. at 19. In doing so, it is proper for the jury to consider the present value of money and the cost of living. *Holz v. Pearson*, 229 Minn. 395, 407, 39 N.W.2d 867, 874 (1949). The fact that the decedent was under no legal obligation to support those beneficiaries to whom he did in fact make financial contributions will not affect their right of recovery. *Lewerenz v. E.W. Wylie Co.*, 236 Minn. 94, 101, 51 N.W.2d 834, 839 (1952); *Thoirs v. Pounsford*, 210 Minn. 462, 467, 299 N.W. 16, 19 (1941). It is immaterial whether the contributions were from the decedent's earnings or savings. *Gross v. General Inv. Co.*, 194 Minn. 23, 31, 259 N.W. 557, 561 (1935). The amount that the beneficiaries inherited from the decedent or the amount of insurance proceeds they received at his death does not affect the amount of damages they are entitled to receive under the wrongful death statute. See 194 Minn. at 23, 259 N.W. at 557; *Wright v. Engelbert*, 193 Minn. 509, 259 N.W. 75 (1935).

The right of the decedent's wife to share in the proceeds of a recovery under the Wrongful Death Act does not terminate upon her remarriage. *Enghusen v. H. Christiansen & Sons, Inc.*, 259 Minn. 442, 450, 107 N.W.2d 843, 849 (1961). Parents who have depended financially on a child may recover under the statute, even though the child was emancipated or was married. *Lewerenz v. E.W. Wylie Co.*, 236 Minn. 94, 101, 51 N.W.2d 834, 839 (1952); *Moore v. Palen*, 228 Minn. 148, 154, 36 N.W.2d 540, 543 (1949).

Loss of the prospect or expectation of payment of a debt due a beneficiary from the decedent is a proper element of damages. *Getz v. Standard Oil Co.*, 168 Minn. 347, 210 N.W. 78 (1926).

In *Muehlhauser v. Erickson*, 621 N.W.2d 24 (Minn. Ct. App. 2000), the court of appeals considered CIVJIG 91.75 and addressed the concern that the instruction no longer uses the term "pecuniary loss." The court ruled that:

When the heading and the text are read together, the jury is informed that it is to ascertain the money value of losses resulting from the wrongful death. The absence of the term "pecuniary loss" takes nothing away from this definition, nor would its inclusion add anything to it.

621 N.W.2d at 30.

#### Research References

*West's Key Number Digest*  
Death ◊78 to 101, 104(4)



*Legal Encyclopedias*

C.J.S., Death §§ 58 to 66, 165 to 168, 171 to 173, 175 to 212

## CIVJIG 91.80

**WRONGFUL DEATH—NEGLIGENCE OF  
PLAINTIFF'S DECEDENT OR OF ONE OF SEVERAL  
BENEFICIARIES****Damages for a family when one member may be at fault**

In deciding the total amount of damages for the family, do not be influenced by the fact that one family member may have been (negligent) (at fault).

---

**AUTHORITIES**

Damages in a wrongful death action pursuant to M.S.A. § 573.02 will be reduced by the decedent's percentage of fault. *See Olson v. Hartwig*, 288 Minn. 375, 377–79, 180 N.W.2d 870, 872–73 (1970). The fault of a surviving spouse or next of kin will also reduce that person's recovery. *See Martz v. Revier*, 284 Minn. 166, 169, 170 N.W.2d 83, 85 (1969) (precomparative negligence, a surviving or next of kin not entitled to recover if negligent).

When the negligence of plaintiff's decedent or of one of several beneficiaries is asserted as a defense in a wrongful death action, the trial judge should require the jury to assess the full amount of the damages suffered by the beneficiaries due to the decedent's death, including that of the negligent beneficiary. The trial judge should also have the jury determine whether any beneficiary was negligent.

**Research References**

*West's Key Number Digest*  
Death ☞24, 104(6)

*Legal Encyclopedias*  
C.J.S., Death §§ 82, 165 to 168

**CIVJIG 91.85****LIFE EXPECTANCY TABLES****Calculate life expectancy**

According to life expectancy tables, the future life expectancy of a \_\_\_-year-old (male) (female) is \_\_\_ years. This means (he) (she) is expected to live to age \_\_\_.

Use this figure to help you determine the probable life expectancy of (name). It is not conclusive proof of (his) (her) life expectancy, and you are not bound by it. It is only an estimate based on average experience.

You may find that (name) (might live) (would have lived) a longer or shorter period than that given in these tables.

Consider this figure along with evidence of the health, physical condition, habits, occupation, and surroundings of (name) and other circumstances that might affect (his) (her) life expectancy.

---

**USE NOTE**

Life expectancy tables are in the Appendix.

**AUTHORITIES**

Mortality or life expectancy tables have considerable evidentiary value, but they are decisive neither of the injured or deceased person's life expectancy nor of the number of years the person's life would have continued. *Hallada v. Great Northern Ry.*, 244 Minn. 81, 69 N.W.2d 673 (1955), cert. denied, 350 U.S. 874, 76 S.Ct. 119, 100 L.Ed. 773 (1955), overruled on other grounds, *Busch v. Busch Construction, Inc.*, 262 N.W.2d 377 (Minn. 1977). The jury is not bound to accept the life expectancy figures in mortality tables. *Tollefson v. Ehlers*, 252 Minn. 370, 377, 90 N.W.2d 205, 210 (1958). Mortality tables are to be considered together with all other evidence. Calculation of life expectancy should be based on all factors that bear on the question, such as the person's health, habits, occupation, surroundings, and other relevant factors. *Thoirs v. Pounsford*, 210 Minn. 462, 467, 299 N.W. 16, 18 (1941).

In *George v. Estate of Baker*, 724 N.W.2d 1, 12–13 (Minn. 2006), the supreme court held that the trial court committed error in admitting

evidence of life expectancy figures from Liberia. The court discussed the issue in detail:

American mortality tables are compiled from the collective experience of insurers, who are financially motivated to ensure that the tables are accurate. Due to this inherent reliability, courts have taken judicial notice of American mortality tables as statistical facts of general and common knowledge. 29 Am.Jur.2d Evidence §§ 102–03 (1994). Certain tables were so readily recognized as reliable that courts identified them by name. See, e.g., *Lincoln v. Power*, 151 U.S. 436, 441, 14 S.Ct. 387, 38 L.Ed. 224 (1894) (“There is high authority for the proposition that courts can take judicial notice of the Carlisle Tables, and can use them in estimating the probable length of life, whether they were introduced in evidence or not.”); *Tollefson v. Ehlers*, 252 Minn. 370, 377, 90 N.W.2d 205, 210 (1958) (accepting the American Experience Tables of Mortality); *Hallada v. Great N. Ry.*, 244 Minn. 81, 95, 69 N.W.2d 673, 684–85 (1955) (accepting the U.S. Life Experience Table of Mortality), overruled on other grounds by *Busch v. Busch Const., Inc.*, 262 N.W.2d 377 (Minn. 1977); *Thoirs v. Pounsford*, 210 Minn. 462, 464, 466–67, 299 N.W. 16, 17–18 (1941) (accepting the American Experience Mortality Table). Presumably, American mortality tables include the life expectancies of immigrants who die in America.

Life expectancy figures from other countries may display few or none of these indicia of reliability. Countries that have no insurance industry, census, or other reliable data may not be able to provide accurate mortality information. Although the presence of the Liberian mortality information in the CIA World Factbook might allow a court to conclude that it is authentic, i.e., it is the official Liberian information, it does not provide any information about how the information was compiled or why it should be regarded as reliable.

American mortality tables have the additional benefit of providing remaining life expectancy based on the age of the individual in question. “A mortality table consists of a schedule showing for each age the number of persons who die and the number who survive out of a known number under observation.” Henry Moir, *Sources and Characteristics of the Principal Mortality Tables* 1 (1932). A single life expectancy figure for an entire population, however, is considerably less meaningful. That figure will be skewed by the country’s infant mortality rate and understate the life expectancy of any individual who survives infancy. A single figure will be of no relevance to an individual who has already exceeded the life expectancy of a newborn. For these reasons, “tables which do not show the expectation at an age approximately that of the person in question should not be received.” 32A C.J.S. Evidence § 1007 (1996) (*citing Decker v. McSorley*, 111 Wis. 91, 86 N.W. 554 (1901)).

The standard jury instruction recognizes the need for tables that show the remaining life expectancy of a person who is the age of the decedent . . .



The Liberian life expectancy figure lacks any indicia of reliability, in general and as applied to Dekpah. First, it was not a life expectancy “table” but provides only a single life expectancy figure for all males in Liberia. Applied to Dekpah, the Liberian figure loses whatever probative value it may have had. He had outlived the stated expectancy by seven years. He had survived infant mortality. He was no longer endangered by Liberia’s internal conflicts. He did not, as far as the record reveals, carry any chronic diseases from Liberia. He had access to American health care. We fail to see how the figure could aid a jury in evaluating Dekpah’s life expectancy. We hold that its use in the jury instructions was error and we remand for a new trial on damages.

George invites us to hold that “absent convincing proof of relevance, life expectancy tables for residents of foreign countries should never be used to assist a jury in determining life expectancies of U.S. residents.” Although we are not prepared to rule that the district court may never take judicial notice of life expectancy data for a foreign country, we caution that such data should be received only where a foundational basis can be laid. That basis should include indicia of the general reliability of the data and a showing that the data provides a life expectancy for individuals approximately the age of the individual in question.

*George*, 724 N.W.2d at 12–13.

#### Research References

*West’s Key Number Digest*

Damages ⇨167, 216; Evidence ⇨364

*Legal Encyclopedias*

C.J.S., Damages §§ 265, 277, 356 to 357, 363 to 370; Evidence §§ 1004, 1007 to 1009



## CATEGORY 92

### PROPERTY DAMAGE

---

#### *Table of Instructions*

CIVJIG 92.10 Damage to Property—Elements

CIVJIG 92.15 Mitigation of Damages—Property

---

### CIVJIG 92.10

#### DAMAGE TO PROPERTY—ELEMENTS

##### Part A

##### **Damaged beyond repair**

If (specify the property) was damaged beyond repair, (claimant)'s damages include:

1. The actual value of the property

[To find the value of the property, calculate:

- a. The value of the property at the time and place of destruction
- b. (Minus the value, if any, of what remains of the property after the destruction)]

[Where property values fluctuate, calculate the highest value within a reasonable period during which (plaintiff) might have replaced the property.]

2. [Losses resulting from the destruction of the property

The amount of any further dollar loss directly caused by the loss of the property (or) (market interest)]

3. Interest from the time at which the value of the property is fixed

## PART B

### Not damaged beyond repair

If (specify the property) was not damaged beyond repair, (claimant)'s damages are:

1. The actual value of the property

[To find the value of the property, calculate the difference between:

- a. The fair market value of the property at the time and place of damage
- (b. Minus the fair market value, if any, of what remains of the property after the damage).]

- [2. The cost of repair

The reasonable cost of repair for restoring the damaged property to substantially the same condition as it was before the harm.

(If, following repairs, the property is in a better condition than before the harm, damages are limited to the cost of restoring the property to the condition it was in before, not to its improved condition.)]

- [3. Damages when the repair did not restore the value

If the repair did not restore the (specify the property) to substantially the same condition as before the damage:

- a. Determine the reasonable cost of repair, and
- b. Add the difference between the fair market value of the property before the damage and the fair market value after the repairs.



The total damages cannot exceed the difference in value before and after the damage.]

4. Loss of use of the property

Loss of use of the property during the time reasonably and necessarily required (to make the needed repairs to) (to effect a cure for) the property.

---

USE NOTE

If claimant in his case-in-chief has introduced only evidence of the difference in value, and by cross-examination has testified as to repair costs, or if the opposing party has introduced evidence of repair costs, the testimony as to repair costs is admissible solely as impeachment evidence to test the credibility of the opinion evidence given by claimant on direct examination. In this situation, a cautionary instruction regarding the limited use of the impeachment repair cost evidence should be given immediately after CIVJIG 92.10 (Part B).

If claimant, as a part of his own proof and not on cross-examination, introduces evidence of the difference in value before and after the harm and also evidence of the cost of repair, the judge should give that part of CIVJIG 92.10 (Part B) that will give the lower damage recovery. If repair restores the property to a higher value than before the accident, the additional bracketed instruction under CIVJIG 92.10 (Part B, 2) should be given to stress that restoration to the condition before the accident, not the cost to restore to a better condition, is the proper measure of damages.

Furthermore, interest may not be allowed unless the damages are readily ascertainable by computation or reference to generally recognized standards such, as market value, and are not dependent upon contingencies or upon jury discretion. *See Potter v. Hartzell Propeller, Inc.*, 291 Minn. 513, 518-519, 189 N.W.2d 499, 504 (1971).

A claimant suing for less than total destruction to his property has an election under the law of damages to choose the cost of repair or the value before and after the accident. *See Authorities, infra.* This election is exercised by the evidence introduced by the claimant. For example, assume plaintiff is suing for damage to his automobile. Plaintiff in his case-in-chief introduces only opinion evidence about the difference in value of the automobile before and after the accident (\$800). Plaintiff has elected his measure of damages, and CIVJIG 92.10 (Part B, 1) is the proper instruction. This is so, even though on cross-examination by defendant, plaintiff admits that the car was repaired, and that repair

costs were \$500. (Introduction of the repair bills at this time would not affect the problem.) The evidence of repair costs is admitted solely to test the credibility of the opinion testimony of plaintiff as to the difference in value of the automobile before and after the accident. It is only impeachment evidence. Under CIVJIG 92.10 (Part B, 1), plaintiff is entitled to a cautionary instruction on the limited use of the impeachment evidence. This result also follows, even though plaintiff on redirect attempts to rehabilitate his opinion testimony on the difference in value by showing that the repairs did not restore the vehicle to its condition before the accident.

If plaintiff, on the other hand, introduces repair costs (\$500) in his case-in-chief, CIVJIG 92.10 (Part B, 2) is the proper instruction. In this case, the only unusual question would involve a restoration of the automobile to a value greater than before the accident, e.g., value before the accident of \$1,200, and value after the repair of \$1,400. In that case, the bracketed caveat of CIVJIG 92.10 (Part B, 2) should be added to the instruction.

If plaintiff in his case-in-chief introduces evidence of the cost of repair, testifies that the repairs did not restore the automobile to its former condition, and gives opinion evidence of the reduction in value, CIVJIG 92.10 (Part B, 3) is the proper instruction. If plaintiff fails to elect his measure of damages and introduces evidence of the difference in value of the automobile before and after the accident and also the cost of repair, plaintiff is deemed to have elected as his measure of damages that which will give the lowest recovery. *See Authorities, infra.* In such a case, that part of CIVJIG 92.10 (Part B) that will give the lowest recovery is the proper instruction.

### AUTHORITIES

**Destruction of Property.** If property is totally destroyed, the claimant may recover the full value of the property at the time of destruction, less the junk value of what remains. *See* Restatement (Second) of Torts § 927 (1979). If the value of the destroyed property can be ascertained by reference to some objective standards, interest is permitted from the date of destruction. *Hueper v. Goodrich*, 314 N.W.2d 828, 831 (Minn. 1982); *Polaris Indus. v. Plastics, Inc.*, 299 N.W.2d 414, 418 (Minn. 1980); *ICC Leasing Corp. v. Midwestern Mach. Co.*, 257 N.W.2d 551, 556 (Minn. 1977); *Northern Petrochem. Co. v. Thorsen & Thorshov, Inc.*, 297 Minn. 118, 132, 211 N.W.2d 159, 169 (1973); *Potter v. Hartzell Propeller, Inc.*, 291 Minn. 513, 518, 189 N.W.2d 499, 504 (1971); *Varco v. Chicago, M. & St. P. Ry.*, 30 Minn. 18, 22, 13 N.W. 921, 922 (1882). Prejudgment interest is now controlled by statute. *See* M.S.A. § 549.09, subd. 1. If the value of the destroyed property can be determined only by jury determination upon trial, interest is payable from the time of the verdict. *See Pacific Indem. Co. v. Thompson-Yaeger, Inc.*, 258 N.W.2d 762, 765 (Minn. 1977); *Employers Liab. Assurance Corp. v. Morse*, 261 Minn. 259, 267, 111 N.W.2d 620, 626 (1961); M.S.A. § 549.09.

**Loss of Use of Property.** Damages for loss of use are permissible



in the event of total destruction of the property if the claimant is not compensated by interest. *See* Restatement (Second) of Torts § 927, cmts. n, o (1979). If damage for loss of use is recovered, interest is not permitted except for the period of time after replacement of the destroyed property should have been made. *See* 45 Minn.L.Rev. 423 (1960).

**Damage to Property.** If property is damaged but not totally destroyed, the claimant may elect his measure of damages. His damage recovery may be based either on the difference in value of the property before and after the harm, or the reasonable cost of repair. *O'Connor v. Schwartz*, 304 Minn. 155, 158, 229 N.W.2d 511, 513 (1975); *Hart v. North Side Firestone Dealer*, 235 Minn. 96, 98, 49 N.W.2d 587, 588 (1951); *Kopischke v. Chicago, St. P., M. & O. Ry. Co.*, 230 Minn. 23, 30–31, 40 N.W.2d 834, 839 (1950). The same measure of damages may be applied in cases involving damage to real property. *See In re Commodore Hotel Fire & Explosion Cases*, 324 N.W.2d 245, 248 (Minn. 1982). The claimant is permitted to elect the measure of damages. *See Hart v. North Side Firestone Dealer*, 235 Minn. 96, 98, 49 N.W.2d 587, 588 (1951); Restatement (Second) of Torts § 927 (1979). The choice is exercised by the type of proof introduced by the claimant. If the election is clear, the fact that evidence that would support the other measure of damage is introduced by the opposing party, either through direct evidence or cross-examination of the claimant, does not affect the election. If, however, the claimant by his own evidence establishes facts that will support more than one measure of damages, he will be deemed to have elected that measure of damages that gives the lowest recovery. *See Rinkel v. Lee's Plumbing & Heating Co.*, 257 Minn. 14, 20, 99 N.W.2d 779, 783 (1959). *Cf. In re Commodore Hotel Fire & Explosion Cases*, 324 N.W.2d 245, 248 (Minn. 1982) (when property is not totally destroyed, ordinary measure of damages is difference in value before and after the loss, or the cost of restoration, whichever is less).

Recovery for injury to property may include damages for loss of use. *See Kopischke v. Chicago, St. P., M. & O. Ry. Co.*, 230 Minn. 23, 30–31, 40 N.W.2d 834, 839 (1950); Restatement (Second) of Torts § 928(b) (1979). A claim for loss of use damages for personal property must show the value of the use, including time reasonably necessary for making repairs. *See Allen v. Brown*, 159 Minn. 61, 62, 198 N.W. 137, 137 (1924). Loss of use damages will be allowed unless another chattel could have been obtained by the claimant. *See Hanson v. Hall*, 202 Minn. 381, 387–388, 279 N.W. 227, 230–231 (1938).

**Cost of Repair or Restoration.** Where not economically feasible, cost of repair or restoration is not permitted as the proper measure of damage. *Bartl v. New Ulm*, 245 Minn. 148, 150, 72 N.W.2d 303, 306 (1955); *see* Restatement (Second) of Torts § 928 cmt. a (1979). When repairs do not fully restore property to its former condition, the owner is entitled to the value of the remaining diminution so long as the total damages do not exceed the difference in value before and after, or the cost of restoring the property to its former condition, whichever is less. *Rinkel v. Lee's Plumbing & Heating Co.*, 257 Minn. 14, 20, 99 N.W.2d 779, 783 (1959).

**Conversion of Property.** “The measure of damages in conversion cases is generally the value of the property at the time of the conversion plus interest.” *Molenaar v. United Cattle Co.*, 553 N.W.2d 424, 431 (Minn. Ct. App. 1996), rev. denied (Minn. Oct. 15, 1996).

**Damage to Crops.** The measure of damages for injury to or destruction of a growing crop is the difference in value immediately before and after the injury. See *Baillon v. Carl Bolander & Sons Co.*, 306 Minn. 155, 157, 235 N.W.2d 613, 614 (1975); *Koch v. Speiser*, 145 Minn. 227, 230, 176 N.W. 754, 755 (1920); but see *Rector, Wardens and Vestry of St. Christopher’s Episcopal Church v. C.S. McCrossan, Inc.*, 306 Minn. 143, 145, 235 N.W.2d 609, 610 (1975). Evidence as to damages for destruction of or injury to growing crops must be directed to their market value at the time and place of destruction or damage. *Poynter v. Otter Tail County*, 223 Minn. 121, 133, 25 N.W.2d 708, 715 (1947). If it is impracticable to show the value of growing crops, diminution in the rental value of the land due to the injury is the proper measure of damages. See *Larson v. Lammers*, 81 Minn. 239, 241, 83 N.W. 981, 981 (1900).

**Valuation of Shareholder Interest in Closely Held Corporation.** In *Advanced Communication Design, Inc. v. Follett*, 615 N.W.2d 285 (Minn. 2000), the court held that, absent extraordinary circumstances, fair value in a court-ordered buy-out pursuant to M.S.A. § 302A.751 means a pro rata share of the value of the corporation as a going concern without a discount for lack of marketability.

#### Research References

*West’s Key Number Digest*  
Damages ⇨39, 44, 103 to 116, 217

*Legal Encyclopedias*  
C.J.S., Damages §§ 53, 57, 62, 71 to 74, 129 to 140, 142 to 143, 151 to 152, 361;  
Torts § 26



## CIVJIG 92.15

## MITIGATION OF DAMAGES—PROPERTY

## Duty to prevent loss

(Claimant)'s damages for harm to (his) (her) property must not include any loss that (claimant) could have prevented by reasonable care.

---

AUTHORITIES

A person whose property is damaged by the wrongful act or omission of another has a duty to exercise reasonable care and diligence in an effort to minimize the loss. See *Mullen v. Otter Tail Power Co.*, 130 Minn. 386, 391, 153 N.W. 746, 748 (1915); *Gniadck v. Northwestern Improvement & Boom Co.*, 73 Minn. 87, 90, 75 N.W. 894, 895 (1898). See also *State v. Pahl*, 254 Minn. 349, 356, 95 N.W.2d 85, 91 (1959).

The Comparative Fault Act applies to actions "to recover damages for fault resulting in death, in injury to person or property, or in economic loss." M.S.A. § 604.01, subd. 1. The Comparative Fault Act is inapplicable to contract actions. See *Lesmeister v. Dilly*, 330 N.W.2d 95, 101–102 (Minn. 1983); *Mike's Fixtures, Inc. v. Bombard's Access Floor Systems, Inc.*, 354 N.W.2d 837, 839–840 (Minn. Ct. App. 1984). The definition of "fault" includes "[u]nreasonable failure to avoid an injury or to mitigate damages." 354 N.W.2d at 839–840; M.S.A. § 604.01, subd. 1a. Therefore, in some situations, the Comparative Fault Act may apply, rather than CIVJIG 92.15. As to when a mitigation instruction may be appropriate instead of including mitigation as an aspect of the claimant's negligence, see CIVJIG 91.45, Authorities.

## Research References

*West's Key Number Digest*  
Damages ⇨62(3), 217

*Legal Encyclopedias*  
C.J.S., Damages §§ 46 to 52, 168, 361



## CATEGORY 94

### PUNITIVE DAMAGES

---

#### *Table of Instructions*

- CIVJIG 94.10 Punitive Damages  
CIVJIG 94.15 Liability for Punitive  
Damages—Employer-Principal

#### SPECIAL VERDICT FORMS

- CIVSVF 94.90 Punitive Damages  
CIVSVF 94.92 Punitive Damages—Agent and Principal
- 

#### INTRODUCTORY NOTE

Punitive damages in Minnesota are governed by M.S.A. § 549.20. Punitive damages are available in a broad variety of actions. In *Jensen v. Walsh*, 623 N.W.2d 247, 251 (Minn. 2001), the Minnesota Supreme Court concluded that “[a] plain reading of section 549.20 indicates that the legislature intended to allow punitive damages when there is clear and convincing evidence that a defendant acted with deliberate disregard for the rights or safety of others regardless of the nature of the resulting damage,” and held “that a plaintiff may seek punitive damages in an action for intentional damage to property where the only damage is to property, subject to the limitations of section 549.20.”

The statute establishes a “clear and convincing” evidentiary requirement and the standards that must be met in order for a claimant to recover punitive damages. *See* CIVJIG 94.10

Section 549.20, subd. 2 establishes the situations in which an employer or principal may be held liable for punitive damages for the acts of an employee or agent. It also establishes the factors to be taken into consideration by the trier of fact in determining punitive damages. *See* CIVJIG 94.15.

As a result of a 1990 amendment to section 549.20, the statute now requires a bifurcation of the punitive damages issues from the remainder of the litigation, and it requires specific judicial review of any punitive damages award in light of those factors.

By statute, the plaintiff may not include a punitive damages claim

in the complaint. The punitive damages claim may be added only by an amendment to the complaint:

After filing the suit a party may make a motion to amend the pleadings to claim punitive damages. The motion must allege the applicable legal basis under section 549.20 or other law for awarding punitive damages in the action and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim punitive damages.

M.S.A. § 549.191. In applying the statute, the supreme court has stated that the procedure is to be more than a “rubber stamp” of the allegations in the motion papers. “Rather, the judge must ascertain whether there exists prima facie evidence that the defendants acted with ‘willful indifference.’” *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 918, n. 1 (Minn. 1990). The same standard should be applicable under the “deliberate disregard” standard. The court of appeals has held that the “clear and convincing” evidence requirement is incorporated into the statutory requirement that the party claiming punitive damages must present a prima facie case of willful indifference. *Swanlund v. Shimano Indus. Corp.*, 459 N.W.2d 151, 154 (Minn. Ct. App. 1990), rev. denied (Minn. Oct. 5, 1990); *McKenzie v. Northern States Power Co.*, 440 N.W.2d 183, 184 (Minn. Ct. App. 1989). The same standards should be applicable after the 1990 amendment’s adoption of a “deliberate disregard” standard.

If the complaint is amended to allow a party to assert a punitive damages claim, and the evidence is sufficient to justify the claim, the punitive damages issue must be determined by the trier of fact in a separate proceeding, if requested by any of the parties, after the trier of fact has determined that compensatory damages are to be awarded. That requirement was incorporated by the 1990 amendment to section 549.20:

**Subd. 4. Separate proceeding.** In a civil action in which punitive damages are sought, the trier of fact shall, if requested by any of the parties, first determine whether compensatory damages are to be awarded. Evidence of the financial condition of the defendant and other evidence relevant only to punitive damages is not admissible in that proceeding. After a determination has been made, the trier of fact shall, in a separate proceeding, determine whether and in what amount punitive damages will be awarded.

When the trial court decides that there is a submissible claim for punitive damages, the Committee recommends that the court give the jury a preliminary jury instruction on punitive damages. The preliminary instruction may be modeled on CIVJIG 94.10.



If the jury finds that the claimant is entitled to punitive damages, the trial court is required by statute to specifically review that award in light of the factors in section 549.20. This requirement was added by the legislature in 1990. The new statute reads as follows:

**Subd. 5. Judicial review.** The court shall specifically review the punitive damages award in light of the factors set forth in subdivision 3 and shall make specific findings with respect to them. The appellate court, if any, also shall review the award in light of the factors set forth in that subdivision. Nothing in this section may be construed to restrict either court's authority to limit punitive damages.

M.S.A. § 549.20, subd. 5 (1994).

In *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), the United States Supreme Court reiterated the guideposts for determining excessiveness of punitive damages awards from *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575, 116 S.Ct. 1589, 1598–99, 134 L.Ed.2d 809 (1996):

(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

538 U.S. at 418, 123 S.Ct. at 1520.

*(1) Degree of reprehensibility of defendant's misconduct*

The reprehensibility of the defendant's conduct is the most important indicium of the reasonableness of a punitive damages award. 123 S.Ct. at 1521. The Court detailed the nature of the judicial inquiry:

We have instructed courts to determine the reprehensibility of a defendant by considering whether: the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident . . . . The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect. It should be presumed a plaintiff has been made whole for his injuries by compensatory damages, so punitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to achieve punishment or deterrence.

123 S.Ct. at 1521.

Concerns about the impact of evidence of a defendant's out-of-state conduct on punitive damages awards led the Court to impose limits on the admissibility of that evidence:

Lawful out-of-state conduct may be probative when it demonstrates the deliberateness and culpability of the defendant's action in the State where it is tortious, but that conduct must have a nexus to the specific harm suffered by the plaintiff. A jury must be instructed, furthermore, that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred. *Gore*, 517 U.S. at 572–573, 116 S.Ct. 1589 (noting that a State “does not have the power . . . to punish [a defendant] for conduct that was lawful where it occurred and that had no impact on [the State] or its residents”).

538 U.S. at 422, 123 S.Ct. at 1522–23.

(2) *Disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award*

In examining the second guidepost, the Court in *Gore* noted that it was reluctant to identify “concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award.” 116 S.Ct. at 1524. The Court noted that “[o]ur jurisprudence and the principles it has now established demonstrate . . . that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” 116 S.Ct. at 1524. However, the Court noted that because “there are no rigid benchmarks that a punitive damages award may not surpass,” higher ratios may be justifiable where particularly egregious conduct has resulted in a small amount of economic loss. 116 S.Ct. at 1524.

(3) *Disparity between the punitive damages award and civil penalties in comparable cases*

The third guidepost is the disparity between the punitive damages award and civil penalties that are imposed or authorized in comparable cases, although the Court has also looked to potential criminal penalties:

The existence of a criminal penalty does have bearing on the seriousness with which a State views the wrongful action. When used to determine the dollar amount of the award, however, the criminal penalty has less utility. Great care must be taken to avoid use of the civil process to assess criminal penalties that can be imposed only after the heightened protections of a criminal trial

have been observed, including, of course, its higher standards of proof. Punitive damages are not a substitute for the criminal process, and the remote possibility of a criminal sanction does not automatically sustain a punitive damages award.

116 S.Ct. at 1526.

**CIVJIG 94.10****PUNITIVE DAMAGES****Definition of “punitive damages”**

When there is clear and convincing evidence that (defendant) acted with deliberate disregard for the rights or safety of others, you can award (plaintiff) additional damages. These “punitive damages” are intended to punish (defendant) and discourage others from behaving in a similar way. [Punitive damages may not be used to punish the defendant for injury or harm to persons other than the plaintiff in this case, however.]\*

**Clear and convincing evidence**

The evidence must convince you that (defendant) acted with deliberate disregard for the rights or safety of others.

You must have a firm belief, or be convinced there is a high probability, that (defendant) acted this way.

**Deliberate disregard**

“Deliberate disregard” means that (defendant):

1. Knew about facts or intentionally ignored facts that created a high probability of injury to the rights or safety of others, and
2. Deliberately acted
  - a. with conscious or intentional disregard, or
  - b. with indifference to the high probability of injury to the rights or safety of others.

**Factors to consider for punitive damages**

If you decide to award punitive damages, consider, among other things, the following factors:



1. [The seriousness of the hazard to the public that may have been or was caused by (defendant)'s misconduct] [You may not consider any harm to persons who are not parties to this case that was the result of lawful conduct in another state.]\*\*
- [2. The profit (defendant) made as a result of the misconduct]
- [3. The length of time of the misconduct and if (defendant) hid it]
- [4. The amount (defendant) knew about the hazard and of its danger]
- [5. The attitude and conduct of (defendant) when the misconduct was discovered]
- [6. The number and level of employees involved in causing or hiding the misconduct]
7. [The financial state of (defendant)]
- [8. The total effect of other punishment likely to be imposed on (defendant) as a result of the misconduct. This includes compensatory and punitive damage awards to (plaintiff) and other persons]
- [9. The severity of any criminal penalty (defendant) may get].

---

#### USE NOTE

*This instruction should only be given once it has been decided by the judge or the jury that plaintiff is entitled to compensatory damages.*

The propriety of submitting the punitive damages issue must also be evaluated in light of the standards established by the United States Supreme Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996), and reaffirmed in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003).

The factors to be considered in making the punitive damages determination are bracketed to indicate that not all the factors are relevant in all cases. For example, in a defamation case, questions concerning the nature of the hazard and the duration of the defendant's awareness of the hazard will not be relevant. The factors that are used should be tailored to the individual case.

\*The bracketed sentence in the first paragraph of the instruction defining punitive damages is intended to follow the decision of the Supreme Court of the United States in *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (U.S. 2007), in which the Court held that the Due Process Clause forbids a State from using "a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, i.e., injury that it inflicts upon those who are, essentially, strangers to the litigation." *Phillip Morris USA*, 127 S. Ct. at 1063. The Court recognized, however, "that conduct that risks harm to many is likely more reprehensible than conduct that risks harm to only a few. And a jury consequently may take this fact into account in determining reprehensibility." *Phillip Morris USA*, 127 S. Ct. at 1065.

\*\*The second bracketed sentence in "Factors to consider for punitive damages," factor #1, states that the jury "may not consider any harm to persons who are not parties to this case." In *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003), the Supreme Court considered the impact of a defendant's out-of-state conduct on punitive damages, concluding that:

Lawful out-of-state conduct may be probative when it demonstrates the deliberateness and culpability of the defendant's action in the State where it is tortious, but that conduct must have a nexus to the specific harm suffered by the plaintiff. A jury must be instructed, furthermore, that it may not use evidence of out-of-state conduct to punish a defendant for action that was lawful in the jurisdiction where it occurred. *Gore*, 517 U.S., at 572–573, 116 S. Ct. 1589 (noting that a State "does not have the power . . . to punish [a defendant] for conduct that was lawful where it occurred and that had no impact on [the State] or its residents").

538 U.S. at 422, 116 S. Ct. at 1522–23.

The Minnesota Supreme Court has held that it is reversible error to omit instruction on the burden of proof in punitive damages cases.

### AUTHORITIES

M.S.A. § 549.20, subd. 1, establishes the basic punitive damages standards for Minnesota:

**Subdivision 1.** (a) Punitive damages shall be allowed in civil ac-

tions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others.

(b) A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

The statutory focus is now on deliberate disregard, as defined in section 549.20. It supplants the "willful indifference" standard embedded in the statute prior to the 1990 amendment. In *Bucko v. First Minnesota Savings Bank*, 471 N.W.2d 95 (Minn. 1991), Justice Simonett, in dissent, joined by Justice Coyne, stated his opinion that the change in the wording from "willful indifference" to "deliberate disregard" did not change the test but only clarified it. See *Bucko*, 471 N.W.2d at 101 (Simonett, J., dissenting).

The propriety of submitting the punitive damages issue must also be evaluated in light of the standards established by the Supreme Court of the United States in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). The court imposed constraints on the award of punitive damages, including a limitation on a State's right to "impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States." 517 U.S. at 572, 116 S.Ct. at 1589. The court also held that "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment but also of the severity of the penalty that a State may impose." 517 U.S. at 574, 116 S.Ct. at 1598. The court established three "guideposts" for purposes of making that determination: the degree of reprehensibility of the conduct; the ratio of the punitive damages to actual damages; and the sanctions for comparable misconduct. 517 U.S. at 575, 116 S.Ct. at 1598-1599.

In *Becker v. Alloy Hardfacing & Engineering Co.*, 401 N.W.2d 655 (Minn. 1987), the supreme court, in noting the burden of proof standards in former Civil JIG 195, said that "[w]e conclude that the failure to provide the jury with proper instructions on the standard of proof" was fundamental, prejudicial error. 401 N.W.2d at 660. The court intimated that the instructions in JIG 195 were proper instructions on the burden of proof issue. See also *Bucko v. First Minnesota Savings Bank*, 471 N.W.2d 95, 98 (Minn. 1991) ("The jury was properly instructed as to the clear and convincing evidence necessary for a find-



ing of willful indifference and an award of punitive damages,” citing *Becker*, 401 N.W.2d at 659–660.).

The general rule is that punitive damages may not be awarded absent proof of compensable damages, even where the plaintiff asserts an action for damages pursuant to a statute that provides for a civil cause of action but permits recovery only for actual loss. *Potter v. LaSalle Court Sports & Health Club*, 384 N.W.2d 873, 875 (1986).

While punitive damages are not usually awarded without proof of actual damages, the supreme court has held that punitive damages may be awarded in cases of defamation *per se*, even absent proof of actual damages. See *Becker v. Alloy Hardfacing & Engineering Co.*, 401 N.W.2d 655 (Minn. 1987); *Northfield Nat. Bank v. Associated Milk Producers, Inc.*, 390 N.W.2d 289 (Minn. Ct. App. 1986). However, in *Lewis v. Equitable Life Assurance Soc.*, 389 N.W.2d 876 (Minn. 1986), the supreme court denied the imposition of punitive damages in a defamation action involving compelled self-publication. The court also stated that punitive damages should not be awarded in newly recognized causes of action. 389 N.W.2d at 892.

In *Jensen v. Walsh*, 623 N.W.2d 247 (Minn. 2001) a case arising out of a bitter dispute between neighbors, the supreme court considered whether punitive damages were available in an action for intentional damage to property where the only damage is to property. The court held:

A plain reading of section 549.20 indicates that the legislature intended to allow punitive damages when there is clear and convincing evidence that a defendant acted with deliberate disregard for the rights or safety of others regardless of the nature of the resulting damage. Thus, we hold that a plaintiff may seek punitive damages in an action for intentional damage to property where the only damage is to property, subject to the limitations of section 549.20.

623 N.W.2d at 251 (emphasis in the original), overruling *Independent School Dist. No. 622 v. Keene Corp.*, 511 N.W.2d 728 (Minn. 1994).

Punitive damages are not available for breach of contract. *Minnesota-Iowa Television Co. v. Watonwan T.V. Improvement Ass’n*, 294 N.W.2d 297, 309 (Minn. 1980). However, if the breach is accompanied by an independent tort, punitive damages may be appropriate. 294 N.W.2d at 309.

In *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (U.S. 2007), the Supreme Court further refined the substantive due process standards applicable to punitive damages awards. The suit against Philip Morris was based on negligence and deceit theories. The jury found Philip Morris liable on the basis of the deceit theory and awarded punitive damages of \$79.5 million, in addition to compensatory damages of \$821,000 (reduced to \$521,000 because of Oregon’s statutory cap on noneconomic



damages). Although the ratio of punitive to compensatory damages was almost 100 to 1, the Court did not decide the case on that basis. Instead, the Court held that it was error for the trial court in the case to refuse a requested instruction by Philip Morris that it could not punish Philip Morris for any harm caused to other persons not involved in the lawsuit. The requested instruction read in its entirety as follows:

If you determine that some amount of punitive damages should be imposed on the defendant, it will then be your task to set an amount that is appropriate. This should be such amount as you believe is necessary to achieve the objectives of deterrence and punishment. While there is no set formula to be applied in reaching an appropriate amount, I will now advise you of some of the factors that you may wish to consider in this connection.

(1) The size of any punishment should bear a reasonable relationship to the harm caused to Jesse Williams by the defendant's punishable misconduct. Although you may consider the extent of harm suffered by others in determining what that reasonable relationship is, you are not to punish the defendant for the impact of its alleged misconduct on other persons, who may bring lawsuits of their own in which other juries can resolve their claims and award punitive damages for those harms, as such other juries see fit . . . .

(2) The size of the punishment may appropriately reflect the degree of reprehensibility of the defendant's conduct—that is, how far the defendant has departed from accepted societal norms of conduct.

*Phillip Morris USA*, 127 S. Ct. at 1068–69.

The Supreme Court held that the Due Process Clause forbids a State from using “a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, i.e., injury that it inflicts upon those who are, essentially, strangers to the litigation.” *Phillip Morris USA*, 127 S. Ct. at 1063. The Court did say that evidence of actual harm to nonparties is relevant on the reprehensibility issue, however:

Evidence of actual harm to nonparties can help to show that the conduct that harmed the plaintiff also posed a substantial risk of harm to the general public, and so was particularly reprehensible—although counsel may argue in a particular case that conduct resulting in no harm to others nonetheless posed a grave risk to the public, or the converse. Yet for the reasons given above, a jury may not go further than this and use a punitive damages verdict to punish a defendant directly on account of harms it is alleged to have visited on nonparties.

Later in its opinion the Court reiterated the point, stating that “conduct that risks harm to many is likely more reprehensible than

conduct that risks harm to only a few,” and that “a jury consequently may take this fact into account in determining reprehensibility.”

The Court’s only guidance on how the two issues might be separated is the following statement:

How can we know whether a jury, in taking account of harm caused others under the rubric of reprehensibility, also seeks to punish the defendant for having caused injury to others? Our answer is that state courts cannot authorize procedures that create an unreasonable and unnecessary risk of any such confusion occurring. In particular, we believe that where the risk of that misunderstanding is a significant one—because, for instance, of the sort of evidence that was introduced at trial or the kinds of argument the plaintiff made to the jury—a court, upon request, must protect against that risk. Although the States have some flexibility to determine what kind of procedures they will implement, federal constitutional law obligates them to provide some form of protection in appropriate cases.

*Phillip Morris USA*, 127 S. Ct. at 1065.

#### **Research References**

*West’s Key Number Digest*

Damages ⇨87 to 94, 215

*Legal Encyclopedias*

C.J.S., Damages §§ 183, 195 to 201, 208 to 217, 371 to 372

**CIVJIG 94.15****LIABILITY FOR PUNITIVE DAMAGES—EMPLOYER-PRINCIPAL****Deciding punitive damages**

You may award punitive damages only if you find:

- [1. (employer) (principal) authorized the act and how it was, in fact, done], or
- [2. (employee) (agent) was unfit, and (employer) (principal) deliberately ignored a high probability that (he) (she) was unfit], or
- [3. (employee) (agent) was:
  - [a. Employed as a manager with authority to set policy and make planning level decisions for the (employer) (principal), and
  - b. Was acting in the scope of that employment], or
- [4. The (employer) (principal) or a managerial (employee) (agent) with authority to set policy and make planning level decisions:
  - a. Was acting in the scope of that employment, and
  - b. Endorsed or approved the act, and
  - c. Knew the kind and probable consequences of the act.]

---

**USE NOTE**

This instruction is intended for use in cases where there is an issue as to whether a master or principal will be held liable for punitive damages because of an act done by an agent. Only the relevant bracketed parts of the instruction should be used.

## AUTHORITIES

M.S.A. § 549.20, subd. 2, reads as follows:

**Subd. 2.** Punitive damages can properly be awarded against a master or principal because of an act done by an agent only if:

(a) the principal authorized the doing and the manner of the act, or

(b) the agent was unfit and the principal deliberately disregarded a high probability that the agent was unfit, or

(c) the agent was employed in a managerial capacity with authority to establish policy and make planning level decisions for the principal and was acting in the scope of that employment, or

(d) the principal or a managerial agent of the principal, described in clause (c), ratified or approved the act while knowing of its character and probable consequences.

**Research References***West's Key Number Digest*

Damages Ⓒ92, 215; Labor and Employment Ⓒ3054; Principal and Agent Ⓒ159(1)

*Legal Encyclopedias*

C.J.S., Agency §§ 375, 377, 419 to 421, 423 to 445; Damages §§ 208 to 210, 212, 371 to 372



## SPECIAL VERDICT FORMS

## CIVSVF 94.90

## PUNITIVE DAMAGES

1. By clear and convincing evidence, did (defendant) act with deliberate disregard for the rights or safety of others?

---

Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* What amount of money will serve to punish (defendant) and discourage others from behaving in a similar way?

\$\_\_\_\_\_

---

USE NOTE

Both questions on CIVSVF 94.90 correspond to CIVJIG 94.10.

## CIVSVF 94.92

## PUNITIVE DAMAGES—AGENT AND PRINCIPAL

1. By clear and convincing evidence, did (defendant's agent) act with deliberate disregard for the rights and safety of others?

---

Yes or No

*If your answer to Question 1 was "Yes," then answer [this question] [these questions]:*

- [2. Did (defendant principal) authorize the (agent)'s act and how it was, in fact, done?

---

Yes or No]

- [3. Was (agent) unfit?

---

Yes or No]

- [4. *If your answer to Question 3 was "Yes," then answer this question:* Did (principal) deliberately ignore a high probability that (agent) was unfit?

---

Yes or No]

- [5. Was (agent) employed as a manager with authority to set policy and make planning level decisions for (principal)?

---

Yes or No]

- [6. *If your answer to Question 5 was "Yes," then answer this question:* Was (agent)'s act done in the scope of that employment?

---

Yes or No]

- [7. Did (principal) or a managerial agent of (principal) endorse or approve (agent)'s act, while knowing the kind and probable consequences of that act?

---

Yes or No]

- [8. *If your answer to Question 1 was "Yes," then answer this question:* What amount of punitive damages will serve to punish (agent) and discourage others from behaving in a similar way?

\$\_\_\_\_\_]

- [9. *If your answer to any one of Questions 2, 4, 6, and 7 was “Yes,” then answer this question: What amount of punitive damages will serve to punish (principal) and discourage other [employers] [principals] from behaving in a similar way?*

\$\_\_\_\_\_]

**USE NOTE**

The questions in this special verdict form correspond with the following jury instructions:

- 1. CIVJIG 94.10: Punitive Damages.
- 2. CIVJIG 94.15: Punitive Damages—Agent and Principal.
- 3. CIVJIG 94.15: Punitive Damages—Agent and Principal.
- 4. CIVJIG 94.15: Punitive Damages—Agent and Principal.
- 5. CIVJIG 94.15: Punitive Damages—Agent and Principal.
- 6. CIVJIG 30.30: Principal and Agent—Scope of Authority.
- 7. CIVJIG 94.10: Punitive Damages.
- 8. CIVJIG 94.10: Punitive Damages.
- 9. CIVJIG 94.10: Punitive Damages.





## APPENDIX MORTALITY TABLES

The National Center for Health Statistics publishes life expectancy tables. The United States Life Tables, 2009, are available in National Vital Statistics Reports, vol. 62, no. 7 (January 6, 2014). The life tables can be found at: [http://www.cdc.gov/nchs/data/nvsr/nvsr62/nvsr62\\_07.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr62/nvsr62_07.pdf).



# Table of Laws and Rules

---

## UNITED STATES CONSTITUTION

	Sec.
Amend V.....	Cat. 52, Intro.

## CODE OF FEDERAL REGULATIONS

29 C.F.R. Sec.	This work Instr. No.
1910.1200 .....	75.26

## MINNESOTA CONSTITUTION

	This work Instr. No.		This work Instr. No.
Art. I, § 4.....	20.60	Art. I, § 16 .....	55.25, 55.30
Art. I, § 13 .....	Cat. 52, Intro., 52.55		

## MINNESOTA STATUTES

Sec.	This work Instr. No.	Sec.	This work Instr. No.
2-313(1)(a) .....	22.10	65B.51(1).....	65.91, 65.92
3.376(3h).....	85.19	65B.51(3).....	65.40
8.31 .....	57.40	65B.51(3)(a).....	65.40
8.31(3)(a).....	57.40	65B.51(3)(b).....	65.40
8.31(3a) .....	57.40	88.10(1) .....	25.35
13.08(1) .....	60.75	103E.091.....	52.80
18.78(2) .....	25.35	103E.202(5) .....	52.80
60A.08(9).....	59.25	103E.215.....	52.80
65B.43(4).....	32.10	103E.215(4) .....	52.80
65B.43(9).....	65.40	103E.241.....	52.80
65B.43(16) .....	65.92	103E.245.....	52.80
65B.43(17) .....	65.91	103E.261.....	52.80
65B.43(18) .....	65.92	117.025(2).....	Cat. 52, Intro., 52.10, 52.15
65B.43(19) .....	65.91		
65B.48 .....	32.10	117.025(11) .....	Cat. 52, Intro.

## MINNESOTA STATUTES—Continued

Sec.	This work Instr. No.	Sec.	This work Instr. No.
117.075 .. Cat. 52, Intro., 52.10, 52.20		181.931(4).....	55.66
117.085 .....	52.55	181.931(5).....	55.68
117.086 .....	52.60	181.931(6).....	55.65, 55.67
117.165(1).....	52.20	181.932 .....	55.65, 55.67, 55.68
117.175 .... 52.20, 52.30, 52.70, 52.75		181.932(1)(1).....	55.65, 55.66
117.175(1).....	52.30	181.932(1)(a).....	55.66
121A.58..... Cat. 70, Intro., 70.35		181.933 .....	50.15
121A.58(2) .....	70.35	181.935 .....	55.65
144.341-144.347.....	91.65	181.935(a).....	55.65
144.651(9).....	80.25	182.699(1).....	55.65
144.341 to 144.347.....	91.55	260C.007(5, 13).....	Cat. 70, Intro.
145.424 .....	Cat. 80, Intro.	302.011 .....	23.10
145.424(3) .....	Cat. 80, Intro.	302A.251 .....	23.10
145.682 .....	Cat. 80, Intro.	302A.251(1) .....	23.10
145.682(2).....	80.22	302A.251(5) .....	23.10
145.682(6) .....	Cat. 80, Intro.	302A.255(1) .....	23.10
145.682(6)(c).....	Cat. 80, Intro.	302A.255(1)(a) to (c) .....	23.10
145.682(2 and 3).....	Cat. 80, Intro.	302A.255(2)(a) .....	23.10
145.682(2 and 4).....	Cat. 80, Intro.	302A.255(b) .....	23.10
148.975 .....	Cat. 80, Intro.	302A.361 .....	23.10
148A.03(a)(2).....	55.20	302A.751 .....	92.10
148B.68 . 55.20, 55.25, 55.30, Cat. 80, Intro.		302A.751(3a).....	23.10
163.11-.12.....	Cat. 52, Intro.	317A.361 .....	23.10
163.12(7, 10).....	Cat. 52, Intro.	322A.28(2) .....	23.10
168A.05(6) .....	32.10	323.19 .....	23.10
168A.10 .....	32.10	323.20 .....	23.10
169.09(5a).....	32.15, 32.16	323A.0101-323A.1203 .....	30.50
169.20 .....	65.30	323A.0202(c)(3) .....	30.50
169.20(1).....	65.30	323A.0301 .....	Cat. 30, Intro., 30.55
169.20(2).....	65.30	323A.0305 .....	Cat. 30, Intro., 30.55
169.20(3) .....	65.30	323A.0306(a)....	Cat. 30, Intro., 30.55
169.20(4).....	65.30	325C.01(2) .....	40.25
169.20(5).....	65.30	325C.01(3) .....	40.25
169.20(2 and 4) .....	65.30	325C.01(4) .....	40.25
169.26 .....	48.45	325C.01(5) .....	40.20
169.96 .....	25.45	325C.01-325C.08 .....	40.25
169.96(b).....	65.25	325C.03 .....	40.25
169.96(b).....	Cat. 65, Intro.	325C.07 .....	40.25
169.685(4).....	Cat. 28, Intro., 28.15, 75.20	325C.07(a).....	40.20
170.54 .....	32.20	325D.44(1)(8) .....	40.15
176.011(16) .....	55.33	325D.44(3) .....	40.15
176.061(5) .....	Cat. 25, Intro.	325D.45(1) .....	40.15
176.061(5)(c) .....	55.32, 55.34	325F.64 .....	57.40
181.931 to 181.935.....	55.65	325F.68(2) .....	57.40
181.931 .....	55.65	325F.69 .....	57.40
		325F.70 .....	57.40
		325G.17(2) .....	22.40



## MINNESOTA STATUTES—Continued

Sec.	This work Instr. No.	Sec.	This work Instr. No.
325G.17(5) .....	22.40		45.94, 45.96
325G.18 .....	22.40	340A.90(1)(a)(1) .....	45.62
325G.19 .....	22.40	340A.90(1)(a)(2) .....	45.62
326F.60 .....	57.40	340A.90(1)(c) .....	Cat. 45, Intro.
330.31 .....	23.10	340A.101(2) .....	Cat. 45, Intro., 45.20
336.1-201(10) .....	22.40	340A.101(19) .....	Cat. 45, Intro.
336.1-201(19) .....	20.55	340A.410(7) .....	45.15
336.1-205 .....	22.30	340A.501 .....	45.42
336.1-205(1) .....	22.30, 22.45	340A.502 .....	Cat. 45, Intro., 45.15
336.1-205(2) .....	22.30, 22.45	340A.503 .....	Cat. 45, Intro., 45.15
336.2-104(1) .....	22.25	340A.503(2)(1) .....	Cat. 45, Intro., 45.40, 45.60
336.2-105(1) .....	22.10, 22.25	340A.503(6) .....	45.40
336.2-106(1) .....	22.25	340A.504 .....	Cat. 45, Intro., 45.15
336.2-204(3) .....	20.15	340A.801 .....	Cat. 45, Intro., 45.15, 45.25, 45.60, 45.62
336.2-313 .....	Cat. 22, Intro., 22.10, 75.20	340A.801(1) .....	Cat. 45, Intro., 45.55
336.2-313(1) .....	22.10	340A.801(3) .....	Cat. 45, Intro., 45.40
336.2-313(1)(a) .....	22.10	340A.801(6) .....	Cat. 45, Intro., 45.62, 45.93, 45.94, 45.96
336.2-313(2) .....	22.10		
336.2-314 .....	Cat. 22, Intro., 22.25, 75.20	346.16 .....	Cat. 38, Intro.
336.2-314(1) .....	22.25	347.22 .....	Cat. 25, Intro., Cat. 28, Intro., Cat. 38, Intro., 38.10, 38.30, 38.40, 38.50, 38.70, 38.80, 38.90, 38.91, 38.92
336.2-314(3) .....	22.30		
336.2-315 .....	Cat. 22, Intro., 22.35, 75.20	363.11 .....	55.65
336.2-315(3)(b) .....	22.35	363A.04 .....	55.25
336.2-316 .....	Cat. 22, Intro., 22.40	363A.029(4) .....	60.75
336.2-316(2) .....	22.40	363A.33 .....	Cat. 55, Intro.
336.2-316(3)(c) .....	22.45	466.03 ...	Cat. 85, Intro., 85.31, 85.60
336.2-401 .....	22.25	466.03(4) .....	Cat. 85, Intro., 85.60
336.2-401(2) .....	22.25	466.03(4)(a) .....	85.63
336.2-606 .....	22.70	466.03(6e) .....	85.31
336.2-607 .....	22.70	501B.60(3) .....	23.10
336.2-610(1) ...	Cat. 20, Intro., 20.46	501B.151 .....	23.10
336.2-714 .....	22.70	501B.151(2)(a) .....	23.10
336.2-714(1) .....	22.70	501B.151(2)(b) .....	23.10
336.2-714(2) .....	22.70	501B.151(6) .....	23.10
336.2-714(3) .....	22.70	504B.161 .....	85.46
336.2-715 .....	22.70	519.05 .....	91.50
336.2-715(1) .....	22.70	540.08 .....	91.60
336.2-715(2) .....	22.70	540.18 .....	Cat. 70, Intro.
336.2-715(2)(a) .....	22.70	541.02 .....	85.80
336.2-719(1)(a) .....	22.70	541.05(1)(5) .....	Cat. 80, Intro.
336.3-311 .....	20.81	541.076 .....	Cat. 80, Intro.
336.3-420(a) .....	60.65	541.076(b) .....	Cat. 80, Intro.
340.14(1) .....	45.10	544.41 ...	Cat. 75, Intro., 75.31, 75.65, 75.94, 75.95
340.14(1a) .....	45.10		
340A.90 .....	Cat. 45, Intro., 45.62, 45.92,		

## MINNESOTA STATUTES—Continued

Sec.	This work Instr. No.	Sec.	This work Instr. No.
544.41(2).....	Cat. 75, Intro., 75.10	604.02(1). 27.15, Cat. 28, Intro., 28.91	
544.41(3). Cat. 75, Intro., 75.31, 75.94		604.02(2).....	27.15
544.42.....	Cat. 80, Intro.	604.02(3). 27.15, Cat. 28, Intro., 75.95	
544.42(2)(2).....	Cat. 80, Intro.	604.03.....	75.55
544.42(4).....	Cat. 80, Intro.	604.06 . Cat. 28, Intro., Cat. 45, Intro.	
546.12.....	10.20	604.07.....	90.25
546.15.....	10.45	604.10.....	Cat. 75, Intro.
546.16.....	10.45	604.14(1).....	Cat. 70, Intro.
546.17.....	10.45	604.101.....	57.20, Cat. 75, Intro.
546.18.....	10.45	604.101(4).....	57.20
548.251 . . Cat. 90, Intro., 90.20, 91.20		604A.01.....	Cat. 80, Intro., 80.22
548.251(1)(2).....	Cat. 90, Intro.	604A.10.....	25.35
548.251(5).....	Cat. 90, Intro., 90.20	604A.20-604A.27.....	85.31
549.09 . . . Cat. 90, Intro., 90.20, 92.10		604A.25(1).....	85.31
549.09(1).....	92.10	609.06.....	60.36
549.20... Cat. 50, Intro., 50.65, 50.95, 50.96, 91.75, Cat. 94, Intro.		609.06(1).....	60.30, 60.63, 70.35
549.20(1).....	Cat. 25, Intro., 94.10	609.06(1)(4).....	60.48
549.20(2).....	94.15	609.06(1)(7).....	70.35
549.20(5).....	Cat. 94, Intro.	609.06(2).....	60.63
549.191.....	Cat. 94, Intro.	609.06(6).....	Cat. 70, Intro.
554.01-.05.....	Cat. 50, Intro.	609.06(8).....	Cat. 48, Intro., 48.40
554.02(2)(3).....	Cat. 50, Intro.	609.065.....	60.36
554.03.....	Cat. 50, Intro.	609.066.....	60.60
561.01.....	60.80, 60.86, 85.55	609.066(3).....	60.30
561.02.....	60.86	609.377.....	70.35
561.03.....	60.86	609.378.....	70.35
561.04.....	60.42	611A.79(2).....	Cat. 70, Intro.
561.09.....	Cat. 38, Intro., 60.42	611A.79(4).....	Cat. 70, Intro.
561.19.....	60.80	617.90.....	Cat. 70, Intro.
561.19(2)(a).....	60.80	626.556(3)(a)(1).....	Cat. 80, Intro.
561.19(2)(b).....	60.80	629.32.....	60.70
573.02 . . . . 28.93, 80.11, 80.95, 80.96, 91.80		629.33.....	60.70
573.02(1).....	91.75	629.34.....	60.70
604.01... Cat. 25, Intro., 25.45, 25.50, Cat. 28, Intro., 65.15		629.36.....	60.70
604.01(1).....	Cat. 28, Intro., 28.15, 28.90, 92.15	629.37.....	60.70
604.01(1a)....	Cat. 25, Intro., Cat. 28, Intro., 28.15, 28.30, 38.20, Cat. 45, Intro., 45.35, 45.55, 75.90, 91.45, 91.47, 92.15	629.38.....	60.70
604.01-.02.....	Cat. 28, Intro.	629.39.....	60.70
		629.366.....	60.70
		629.402.....	60.70
		715.....	22.70
		721.....	22.70
		169.09, subd. 5a.....	32.10
		Art. 1, § 13.....	Cat. 52, Intro., 52.10
		Ch 103E.....	52.80

TABLE OF LAWS AND RULES

MINNESOTA SESSION LAW SERVICE

<b>Laws</b>	<b>This work Instr. No.</b>
Laws 2013, c. 83 .....	55.65
Laws May 19, 2003, c. 71 ....	Cat. 28, Intro.

MINNESOTA RULES OF CIVIL PROCEDURE

<b>Rule</b>	<b>This work Instr. No.</b>	<b>Rule</b>	<b>This work Instr. No.</b>
17.02 .....	91.60	42.01 .....	15.10
20.01 .....	15.10	47.03 .....	10.40
23 .....	15.10	48 .....	10.45
32.01 .....	12.20	49.01(b) .....	28.15
38.01 .....	20.50	50.01 .....	10.20

MINNESOTA RULES OF EVIDENCE

<b>Rule</b>	<b>This work Instr. No.</b>	<b>Rule</b>	<b>This work Instr. No.</b>
104(a) .....	10.30	613 .....	12.25
404 .....	12.25	702 to 706 .....	12.30
404(a) .....	12.25	801(c) .....	12.25
407 .....	25.48	801(d)(1)(A) .....	12.25
608(a) .....	12.25	801(d)(2) .....	12.25
609 .....	12.25		

MINNESOTA RULES OF PROFESSIONAL CONDUCT

<b>Rule</b>	<b>This work Instr. No.</b>
1.15(b) .....	23.10

NORTH DAKOTA CENTURY CODE

<b>Sec.</b>	<b>Sec.</b>
32-03.2-02 .....	Cat. 28, Intro.

## OHIO REVISED CODE

Sec.	Sec.
26.04(a) .....	Cat. 80, Intro.

## WISCONSIN STATUTES

Sec.	This work Instr. No.
270.25(1) .....	10.45

## UNIFORM COMMERCIAL CODE

Sec.	This work Instr. No.	Sec.	This work Instr. No.
1-205 .....	22.30	2-315 .....	22.35
2-104(1) .....	22.25	2-316 .....	22.40
2-313 .....	22.10, 22.25	2-715 .....	22.70
2-314 .....	22.25		

## UNIFORM LIMITED PARTNERSHIP ACT

Sec.	Sec.
321.0303 .....	Cat. 30, Intro.

## RESTATEMENT THIRD, TORTS

Sec.	This work Instr. No.	Sec.	This work Instr. No.
2(b) .....	75.20	14 .....	75.35
3, Comment b .....	75.32	16 .....	75.20
10, Comment g .....	75.40	20 .....	75.10
10(b) .....	Cat. 70, Intro.	23 .....	Cat. 38, Intro.
10(c) .....	Cat. 70, Intro.	41 .....	70.25

## RESTATEMENT THIRD, TORTS (APPORTIONMENT OF LIABILITY)

Sec.	Sec.
13, Comment d .....	Cat. 28, Intro.



TABLE OF LAWS AND RULES

RESTATEMENT THIRD, TORTS (LIABILITY FOR  
PHYSICAL AND EMOTIONAL HARM)

Sec.	This work Instr. No.
25 .....	38.20

RESTATEMENT THIRD, TORTS (PRODUCTS LIABILITY)

Sec.	This work Instr. No.	Sec.	This work Instr. No.
1, Comment c... Cat. 75, Intro.,	75.31	10 .....	75.40
2(a).....	75.30	19.....	Cat. 75, Intro.
3 .....	75.32, 75.60	20 .....	75.45
5 .....	75.26	20(b) .....	75.31
7 .....	75.60		

RESTATEMENT THIRD, UNFAIR COMPETITION

Sec.	Sec.	Sec.	Sec.
1, Comment.....	Cat. 40, Intro.	48 .....	72.15
46-49 .....	72.15	49 .....	72.15

RESTATEMENT SECOND, AGENCY

Sec.	This work Instr. No.	Sec.	This work Instr. No.
1 .....	23.10, 30.25	213.....	55.20, 55.25
2 .....	23.10, 30.10, 30.30	214, Comment e .....	Cat. 48, Intro.
2(3).....	30.10	235, Comment a .....	30.15
13 .....	23.10	291(2)(d) .....	30.20
140.....	30.30		

RESTATEMENT SECOND, CONTRACTS

Sec.	This work Instr. No.	Sec.	This work Instr. No.
19(2) .....	Cat. 20, Intro., 20.20	52 .....	Cat. 20, Intro., 20.20
24.....	Cat. 20, Intro., 20.15	53(2) .....	20.20
29.....	Cat. 20, Intro., 20.15	55.....	Cat. 20, Intro., 20.20
38(1) .....	Cat. 20, Intro., 20.30	56.....	Cat. 20, Intro., 20.20
38(2).....	Cat. 20, Intro., 20.30	58.....	Cat. 20, Intro., 20.20
41(1) .....	Cat. 20, Intro., 20.30	59.....	Cat. 20, Intro., 20.20, 20.25
41(2) .....	Cat. 20, Intro., 20.30	60.....	Cat. 20, Intro., 20.20
50(1) .....	Cat. 20, Intro., 20.20	71.....	Cat. 20, Intro., 20.40

**RESTATEMENT SECOND, CONTRACTS—Continued**

<b>Sec.</b>	<b>This work Instr. No.</b>	<b>Sec.</b>	<b>This work Instr. No.</b>
86, Comment a.....	20.40	265 .....	20.79
90..... Cat. 20, Intro.,	20.50	280 .....	20.42
152(1) .....	20.76	281 .....	20.81
153 .....	20.75	773 .....	40.40
261 .....	20.79		

**RESTATEMENT SECOND, TORTS**

<b>Sec.</b>	<b>This work Instr. No.</b>	<b>Sec.</b>	<b>This work Instr. No.</b>
8A .....	Cat. 25, Intro., 60.10	334 .....	85.16
10A .....	60.15	335..... Cat. 85, Intro., 85.13, 85.16,	85.31
13 .....	60.25	336..... Cat. 85, Intro.,	85.16
22 .....	60.20	339..... Cat. 85, Intro.,	85.19
23, Comment h .....	38.93	343A .....	85.25
30 .....	60.20	357 .....	85.46
31 .....	60.20	358..... Cat. 85, Intro.,	85.40
35 .....	60.70	359..... Cat. 85, Intro.,	85.52
36, Comment d.....	60.70	360..... Cat. 85, Intro.,	85.43
46..... Cat. 60, Intro.,	60.75	362..... Cat. 85, Intro.,	85.49
48..... Cat. 48, Intro., 48.35,	60.75	383..... Cat. 85, Intro.	
71 .....	60.57	388 .....	75.26
77 .....	60.45	390..... Cat. 70, Intro.,	70.30
79 .....	60.45	400 .....	75.35
81 .....	60.45	401 .....	75.35
86 .....	60.48	402.....	75.35
100-107 .....	60.51	402A .... Cat. 75, Intro., 75.20, 75.30,	75.31
106 .....	60.54	431..... Cat. 25, Intro.,	27.10
107 .....	60.57	432(2) .....	27.15
158 .....	60.42	434, Comment d..... 15.20, Cat. 90,	Intro.
164.....	85.10	439.....	27.15
167 et seq. ....	85.10	500..... Cat. 25, Intro.,	25.37
201.....	60.86	514, Comment a .....	38.80
222A .....	60.65	519-520 .....	Cat. 25, Intro.
223, Comment c.....	60.65	520 .....	85.55
279 .....	27.20	552..... Cat. 57, Intro., 57.20, 80.75	
288A .....	25.45	566, Comment c .....	Cat. 50, Intro.
288B, Comment d.....	25.45	568, Comment d .....	Cat. 50, Intro., 50.20
295A .....	25.47	574, Comment d .....	50.20
299A, Comment g.....	80.10	575, Comment a .. 50.50, 50.60, 50.92	
316 .....	70.25	577.....	50.15
317.....	55.25	580B, Comment g.....	50.45
328D .....	25.50		
328E..... Cat. 85, Intro.			
329..... Cat. 85, Intro.,	85.10		
333..... Cat. 85, Intro.,	85.13		

# TABLE OF LAWS AND RULES

## RESTATEMENT SECOND, TORTS—Continued

Sec.	This work Instr. No.	Sec.	This work Instr. No.
611 .....	50.30	767 .....	40.35
652, Comment a .....	72.20	768 .....	40.40
652B..... Cat. 72, Intro., 72.10, 72.90		772 .....	40.35
652BD .....	Cat. 72, Intro.	774A .....	40.45
652C..... Cat. 72, Intro., 72.15, 72.91		821F .....	60.80
652D .....	72.20, 72.92	924(c), Comment f .....	91.15
652H..... Cat. 72, Intro., 72.25		927 .....	92.10
652H(a) .....	72.25	928, Comment a .....	92.10
744A .....	40.45	928(b) .....	92.10

## RESTATEMENT SECOND, TRUSTS

Sec.	This work Instr. No.	Sec.	This work Instr. No.
170 .....	23.10	179 .....	23.10
175, Comment C .....	23.10		
176 .....	23.10		





## Table of Cases

---

### A

- A.A. Metcalf Moving & Storage Co., Inc. v. North St. Paul-Maplewood Oakdale Schools, 587 N.W.2d 311, 131 Ed. Law Rep. 504 (Minn. Ct. App. 1998)—§ 20.75
- Abraham v. County of Hennepin, 639 N.W.2d 342 (Minn. 2002)—§§ 55.65, 55.66
- Aby v. St. Paul Union Stockyards, 373 N.W.2d 810 (Minn. Ct. App. 1985)—§ Cat. 75, Intro.
- Ackerman v. American Family Mut. Ins. Co., 435 N.W.2d 835 (Minn. Ct. App. 1989)—§§ 25.35, 55.34
- Adamson v. Dougherty, 248 Minn. 535, 81 N.W.2d 110 (1957)—§ Cat. 45, Intro.
- Adee v. Evanson, 281 N.W.2d 177 (Minn. 1979)—§§ 28.25, 85.25
- Admiral Merchants Motor Freight, Inc. v. O'Connor & Hannan, 494 N.W.2d 261 (Minn. 1992)—§§ 23.10, Cat. 80, Intro., 80.55, 80.66
- Advanced Communication Design, Inc. v. Follett, 615 N.W.2d 285 (Minn. 2000)—§§ 23.10, 92.10
- Advanced Training Systems, Inc. v. Caswell Equipment Co., Inc., 352 N.W.2d 1, 42 A.L.R.4th 299 (Minn. 1984)—§§ 40.10, 40.15, Cat. 50, Intro., 50.20, 50.50, 50.91
- AFSCME Councils 6, 14, 65 and 96, AFL-CIO v. Sundquist, 338 N.W.2d 560 (Minn. 1983)—§ Cat. 20, Intro.
- A. Gay Jenson Farms Co. v. Cargill, Inc., 309 N.W.2d 285 (Minn. 1981)—§ 30.25
- Ahlstrom v. Minneapolis, St. P. & S.S.M.R. Co., 244 Minn. 1, 68 N.W.2d 873 (1955)—§ 90.25
- Alafoss v. Premium Corp. of America, Inc., 599 F.2d 232, 26 U.C.C. Rep. Serv. 382 (8th Cir. 1979)—§ 22.70
- Albany Roller Mills, Inc. v. Northern United Feeds and Seeds, Inc., 397 N.W.2d 430, 3 U.C.C. Rep. Serv. 2d 500 (Minn. Ct. App. 1986)—§§ Cat. 20, Intro., 20.42
- Alderman's Inc. v. Shanks, 536 N.W.2d 4, 46 A.L.R.5th 849 (Minn. 1995)—§§ 25.45, 85.50
- Aldes v. Saint Paul Ball Club, Inc., 251 Minn. 440, 88 N.W.2d 94 (1958)—§§ Cat. 70, Intro., 70.15
- Alevizos v. Metropolitan Airports Commission, 317 N.W.2d 352 (Minn. 1982)—§ 52.15
- Alevizos v. Metropolitan Airports Commission of Minneapolis and St. Paul, 298 Minn. 471, 216 N.W.2d 651 (1974)—§§ Cat. 52, Intro., 52.10
- Alexandria Lake Area Service Region v. Johnson, 295 N.W.2d 588 (Minn. 1980)—§§ Cat. 52, Intro., 52.10, 52.55

- Alexis v. State Farm Mut. Auto. Ins. Co., 696 N.W.2d 109 (Minn. Ct. App. 2005)—§ 59.10
- Alholm v. Wilt, 394 N.W.2d 488 (Minn. 1986)—§§ 25.10, 85.70
- Allen v. Brown, 159 Minn. 61, 198 N.W. 137 (1924)—§ 92.10
- Allison v. State, 157 Ind. App. 277, 299 N.E.2d 618 (1973)—§ 65.40
- Alsides v. Brown Institute, Ltd., 592 N.W.2d 468, 134 Ed. Law Rep. 327 (Minn. Ct. App. 1999)—§ 57.40
- Amdahl v. Stonewall Ins. Co., 484 N.W.2d 811 (Minn. Ct. App. 1992)—§ 30.30
- American Family Ins. Co. v. Walser, 628 N.W.2d 605 (Minn. 2001)—§§ Cat. 59, Intro., 59.30
- American Family Mut. Ins. Co. v. Peterson, 405 N.W.2d 418 (Minn. 1987)—§ 59.30
- American Nat. General Ins. Co. v. Solum, 641 N.W.2d 891 (Minn. 2002)—§ 32.10
- Amerinet, Inc. v. Xerox Corp., 972 F.2d 1483 (8th Cir. 1992)—§§ 40.10, 40.15
- Ames v. Brandvold, 119 Minn. 521, 138 N.W. 786 (1912)—§§ Cat. 85, Intro., 85.40
- Ames & Fischer Co., II, LLP v. McDonald, 798 N.W.2d 557 (Minn. Ct. App. 2011)—§ Cat. 80, Intro.
- Amos ex rel. Amos v. Campbell, 593 N.W.2d 263, 134 Ed. Law Rep. 580 (Minn. Ct. App. 1999)—§ 59.15
- Anderson-Johanningmeier v. Mid-Minnesota Women's Center, Inc., 637 N.W.2d 270 (Minn. 2002)—§ 55.65
- Anderson v. Anderson, 259 Minn. 412, 107 N.W.2d 647 (1961)—§§ Cat. 38, Intro., 38.20
- Anderson v. Anoka Hennepin Independent School Dist. 11, 678 N.W.2d 651, 187 Ed. Law Rep. 268 (Minn. 2004)—§§ Cat. 25, Intro., 25.40
- Anderson v. Averbek, 189 Minn. 224, 248 N.W. 719 (1933)—§ 60.70
- Anderson v. Christopherson, 816 N.W.2d 626 (Minn. 2012)—§§ Cat. 38, Intro., 38.30, 38.60, 38.80, 38.90
- Anderson v. Connecticut Fire Ins. Co., 231 Minn. 469, 43 N.W.2d 807 (1950)—§ 15.10
- Anderson v. Eastern Minnesota Power Co., 197 Minn. 144, 266 N.W. 702 (1936)—§ 25.52
- Anderson v. Enfield, 244 Minn. 474, 70 N.W.2d 409 (1955)—§ 25.45
- Anderson v. Honaker, 365 N.W.2d 307 (Minn. Ct. App. 1985)—§§ Cat. 90, Intro., 90.20
- Anderson v. Kammeier, 262 N.W.2d 366 (Minn. 1977)—§§ Cat. 20, Intro., Cat. 50, Intro., 50.20, 50.91
- Anderson v. Mid-Motors, Inc., 256 Minn. 157, 98 N.W.2d 188 (1959)—§ 65.30
- Anderson v. Minneapolis, St. P. & S. S. M. Ry. Co., 146 Minn. 430, 179 N.W. 45 (1920)—§ 27.15
- Anderson v. Minneapolis, St. P. & S.S.M. Ry. Co., 103 Minn. 224, 114 N.W. 1123 (1908)—§ 85.16
- Anderson v. Nystrom, 103 Minn. 168, 114 N.W. 742 (1908)—§ 20.40
- Anderson v. State, Dept. of Natural Resources, 693 N.W.2d 181 (Minn. 2005)—§ Cat. 25, Intro.

## TABLE OF CASES

- Anderson v. Stream, 295 N.W.2d 595 (Minn. 1980)—§§ Cat. 70, Intro., 70.25
- Anderson v. Theisen, 231 Minn. 369, 43 N.W.2d 272 (1950)—§ 27.20
- Anderson by Anderson v. Shaughnessy, 519 N.W.2d 229, 92 Ed. Law Rep. 1263 (Minn. Ct. App. 1994)—§§ 75.25, 75.35
- Anoka, County of v. Blaine Bldg. Corp., 566 N.W.2d 331 (Minn. 1997)—§§ Cat. 52, Intro., 52.10, 52.40, 52.45, 52.55, 52.65
- Antone v. Mirviss, 720 N.W.2d 331 (Minn. 2006)—§ Cat. 80, Intro.
- Anunti v. Payette, 268 N.W.2d 52 (Minn. 1978)—§ 90.30
- Appletree Square I Ltd. Partnership v. Investmark, Inc., 494 N.W.2d 889 (Minn. Ct. App. 1993)—§ 23.10
- Arcadia Development Corp. v. City of Bloomington, 552 N.W.2d 281 (Minn. Ct. App. 1996)—§§ Cat. 52, Intro., 52.15, 60.75
- Arkin v. Industrial Com'n of Colo., 145 Colo. 463, 358 P.2d 879 (1961)—§ 65.40
- Armentrout v. FMC Corp., 842 P.2d 175 (Colo. 1992)—§ 75.20
- Armentrout v. Virginian Ry. Co., 72 F. Supp. 997 (S.D. W. Va. 1947)—§ 91.65
- Armstrong v. Mailand, 284 N.W.2d 343, 11 A.L.R.4th 583 (Minn. 1979)—§§ Cat. 28, Intro., 28.15, 28.25, 28.30
- Armstrong v. St. Paul & Pac. Coal & Iron Co., 48 Minn. 113, 50 N.W. 1029 (1892)—§§ Cat. 20, Intro., 20.45
- Arneson v. Integrity Mut. Ins. Co., 344 N.W.2d 617 (Minn. 1984)—§§ 32.10, 32.15
- Arnold v. National County Mut. Fire Ins. Co., 725 S.W.2d 165 (Tex. 1987)—§ 23.10
- Arnold v. Smith, 121 Minn. 116, 140 N.W. 748 (1913)—§ 23.10
- Art Goebel, Inc. v. North Suburban Agencies, Inc., 567 N.W.2d 511 (Minn. 1997)—§ Cat. 20, Intro.
- Asbestos Products Inc. v. Ryan Landscape Supply Co., 282 Minn. 178, 163 N.W.2d 767 (1968)—§ 22.35
- Ashton v. Thompson, 32 Minn. 25, 18 N.W. 918 (1884)—§ 23.10
- Asia Pacific Indust. Corp. v. Rainforest Cafe, Inc., 380 F.3d 383 (8th Cir. 2004)—§ Cat. 20, Intro.
- Associated Cinemas of America v. World Amusement Co., 201 Minn. 94, 276 N.W. 7 (1937)—§§ Cat. 20, Intro., 20.45
- Atwater Creamery Co. v. Western Nat. Mut. Ins. Co., 366 N.W.2d 271, 52 A.L.R.4th 1217 (Minn. 1985)—§ Cat. 59, Intro.
- Austin v. Rosecke, 240 Minn. 321, 61 N.W.2d 240 (1953)—§ 91.25
- Auto-Owners Ins. Co. v. Forstrom, 684 N.W.2d 494 (Minn. 2004)—§ 32.10
- Axelson v. Minneapolis Teachers' Retirement Fund Ass'n, 544 N.W.2d 297, 108 Ed. Law Rep. 1255 (Minn. 1996)—§§ Cat. 20, Intro., 20.50
- Axelson v. Williamson, 324 N.W.2d 241 (Minn. 1982)—§§ Cat. 70, Intro., 70.30

## B

- Baber v. Dill, 531 N.W.2d 493 (Minn. 1995)—§ 85.25
- Badger Equipment Co. v. Brennan, 431 N.W.2d 900 (Minn. Ct. App. 1988)—§§ Cat. 20, Intro., 20.41



- Baehr v. Penn-O-Tex Oil Corp., 258 Minn. 533, 104 N.W.2d 661 (1960)—§§ Cat. 20, Intro., 20.40
- Bahr v. Boise Cascade Corp., 766 N.W.2d 910 (Minn. 2009)—§ 50.35
- Bailey's Trust, In reBailey, 241 Minn. 143, 62 N.W.2d 829 (1954)—§ 23.10
- Baillon v. Carl Bolander & Sons Co., 306 Minn. 155, 235 N.W.2d 613 (1975)—§ 92.10
- Baker v. City of South St. Paul, 198 Minn. 437, 270 N.W. 154 (1936)—§§ Cat. 85, Intro., 85.63
- Bakke v. Keller, 220 Minn. 383, 19 N.W.2d 803 (1945)—§ 20.76
- Balder v. Haley, 399 N.W.2d 77 (Minn. 1987)—§§ 75.25, 75.40
- Baldwin v. Chicago & N. W. Ry. Co., 285 Minn. 15, 171 N.W.2d 89 (1969)—§ 48.45
- Ballweber v. Kleist, 248 Minn. 102, 78 N.W.2d 671 (1956)—§ 65.30
- Bang v. Charles T. Miller Hospital, 251 Minn. 427, 88 N.W.2d 186 (1958)—§§ Cat. 80, Intro., 80.22
- Bank Midwest, Minnesota, Iowa, N.A. v. Lipetzky, 674 N.W.2d 176 (Minn. 2004)—§ Cat. 20, Intro.
- Bank of Montreal v. Beecher, 133 Minn. 81, 157 N.W. 1070 (1916)—§ 20.40
- Barich v. Pennsylvania Fire Ins. Co., 191 Minn. 628, 255 N.W. 80 (1934)—§ 59.15
- Barnes v. Northwest Airlines, 233 Minn. 410, 47 N.W.2d 180 (1951)—§ 25.50
- Barnett v. Minneapolis & St. L. R. Co., 123 Minn. 153, 143 N.W. 263 (1913)—§§ Cat. 48, Intro., 48.15
- Barrett v. Nash Finch Co., 228 Minn. 156, 36 N.W.2d 526 (1949)—§ 25.45
- Barrett v. City of Virginia, 179 Minn. 118, 228 N.W. 350 (1929)—§§ Cat. 85, Intro., 85.63
- Barron v. Liedloff, 95 Minn. 474, 104 N.W. 289 (1905)—§§ Cat. 85, Intro., 85.46
- Bartl v. City of New Ulm, 245 Minn. 148, 72 N.W.2d 303 (1955)—§ 92.10
- Bartnicki v. Vopper, 532 U.S. 514, 121 S. Ct. 1753, 149 L. Ed. 2d 787 (2001)—§ 72.20
- Bartosch v. Lewison, 413 N.W.2d 530 (Minn. Ct. App. 1987)—§§ Cat. 90, Intro., 90.20
- Bates v. Armstrong, 603 N.W.2d 679 (Minn. Ct. App. 2000)—§§ 32.16, 32.20, 60.93
- Bauer v. Ford Motor Credit Co., 149 F. Supp. 2d 1106 (D. Minn. 2001)—§ 72.10
- Bauer v. Ford Motor Credit Co., 140 F. Supp. 2d 1019 (D. Minn. 2001)—§ 72.20
- Bauer v. State, 511 N.W.2d 447 (Minn. 1994)—§ 50.30
- Baumgartner v. Holslin, 236 Minn. 325, 52 N.W.2d 763 (1952)—§ 55.31
- Bautch v. Red Owl Stores, Inc., 278 N.W.2d 328 (Minn. 1979)—§ 55.55
- Bear v. Honeywell, Inc., 468 N.W.2d 546 (Minn. 1991)—§ 55.33
- Beasley v. Medin, 479 N.W.2d 95 (Minn. Ct. App. 1992)—§ 20.76



## TABLE OF CASES

- Beasy v. Misko, 297 Minn. 527, 211 N.W.2d 881 (1973)—§ 10.45
- Bebo v. Delander, 632 N.W.2d 732 (Minn. Ct. App. 2001)—§ Cat. 50, Intro.
- Beck v. Chicago, M. & St. P. Ry. Co., 134 Minn. 363, 159 N.W. 831 (1916)—§ 91.45
- Becker v. Alloy Hardfacing & Engineering Co., 401 N.W.2d 655 (Minn. 1987)—§§ Cat. 50, Intro., 50.50, 94.10
- Becker v. Bundy, 177 Minn. 415, 225 N.W. 290 (1929)—§ 20.75
- Becker v. Mayo Foundation, 737 N.W.2d 200 (Minn. 2007)—§§ Cat. 25, Intro., Cat. 80, Intro.
- Beckman v. V. J. M. Enterprises, Inc., 269 N.W.2d 37 (Minn. 1978)—§§ Cat. 28, Intro., 28.25
- Beebe v. Kleidon, 242 Minn. 521, 65 N.W.2d 614 (1954)—§ 32.15
- Beehner v. Cragun Corp., 636 N.W.2d 821 (Minn. Ct. App. 2001)—§ 25.35
- Beer v. Minnesota Power & Light Co., 400 N.W.2d 732 (Minn. 1987)—§§ 52.15, 52.45
- Bekkevold v. Potts, 173 Minn. 87, 216 N.W. 790, 59 A.L.R. 1164 (1927)—§ 22.25
- Bemidji Sales Barn, Inc. v. Chatfield, 312 Minn. 11, 250 N.W.2d 185, 20 U.C.C. Rep. Serv. 1137 (1977)—§ 22.70
- Bennett v. Storz Broadcasting Co., 270 Minn. 525, 134 N.W.2d 892 (1965)—§ 40.40
- Benson v. Dunham, 286 Minn. 152, 174 N.W.2d 687 (1970)—§ 65.35
- Benson v. Northwest Airlines, Inc., 561 N.W.2d 530 (Minn. Ct. App. 1997)—§§ Cat. 50, Intro., 50.25
- Bentson v. Berde's Food Center, 231 Minn. 451, 44 N.W.2d 481, 22 A.L.R.2d 733 (1950)—§ 85.60
- Berg v. Gunderson, 275 Minn. 420, 147 N.W.2d 695 (1966)—§ 91.10
- Berg v. Johnson, 252 Minn. 397, 90 N.W.2d 918 (1958)—§ 55.31
- Berg v. Xerxes-Southdale Office Bldg. Co., 290 N.W.2d 612 (Minn. 1980)—§§ Cat. 57, Intro., 57.10
- Berger v. Minneapolis Gaslight Co., 60 Minn. 296, 62 N.W. 336 (1895)—§ 85.55
- Bergstedt, Wahlberg, Berquist Associates, Inc. v. Rothchild, 302 Minn. 476, 225 N.W.2d 261 (1975)—§§ Cat. 20, Intro., 20.10
- Bergstrom v. Sambo's Restaurants, Inc., 687 F.2d 1250 (8th Cir. 1982)—§§ Cat. 20, Intro., 20.10
- Bergum v. Palmborg, 240 Minn. 122, 60 N.W.2d 71 (1953)—§§ Cat. 85, Intro., 85.60
- Bermel v. Auge, 574 N.W.2d 460 (Minn. Ct. App. 1998)—§ 10.20
- Berremman v. West Pub. Co., 615 N.W.2d 362 (Minn. Ct. App. 2000)—§ 23.10
- Beshada v. Johns-Manville Products Corp., 90 N.J. 191, 447 A.2d 539, 33 A.L.R.4th 353 (1982)—§ 75.25
- Betzold v. Sherwin, 404 N.W.2d 286 (Minn. Ct. App. 1987)—§ 85.25
- B.F. Goodrich Co. v. Mesabi Tire Co., Inc., 430 N.W.2d 180 (Minn. 1988)—§§ Cat. 57, Intro., 57.25
- Bieber v. City of St. Paul, 87 Minn. 35, 91 N.W. 20 (1902)—§§ Cat. 85, Intro., 85.63

- Bigay v. Garvey, 575 N.W.2d 107 (Minn. 1998)—§§ Cat. 80, Intro., 80.25
- Bigham v. J. C. Penney Co., 268 N.W.2d 892, 1 A.L.R.4th 241 (Minn. 1978)—§ 75.25
- Bigos v. Kluender, 611 N.W.2d 816 (Minn. Ct. App. 2000)—§ Cat. 85, Intro.
- Bills v. Willow Run I Apartments, 547 N.W.2d 693 (Minn. 1996)—§§ 25.45, Cat. 85, Intro., 85.40, 85.50
- Bilotta v. Kelley Co., Inc., 346 N.W.2d 616 (Minn. 1984)—§§ Cat. 22, Intro., Cat. 25, Intro., Cat. 75, Intro., 75.20, 75.30, 75.35, 75.92
- Bisbee v. Midland Linseed Products Co., 19 F.2d 24 (C.C.A. 8th Cir. 1927)—§ 23.10
- Bisher v. Homart Development Co., 328 N.W.2d 731 (Minn. 1983)—§§ 85.22, 85.25
- Bixler by Bixler v. Avondale Mills, 405 N.W.2d 428 (Minn. Ct. App. 1987)—§ 75.50
- Bjerke v. Johnson, 742 N.W.2d 660 (Minn. 2007)—§§ Cat. 25, Intro., 25.10
- Bjorklund v. Hantz, 296 Minn. 298, 208 N.W.2d 722 (1973)—§ 75.35
- Black v. Northwestern Nat. Bank of Minneapolis, 283 Minn. 86, 167 N.W.2d 147 (1969)—§ 52.80
- Blasing v. P. R. L. Hardenbergh Co., 303 Minn. 41, 226 N.W.2d 110 (1975)—§ 25.46
- Blatz v. Allina Health System, 622 N.W.2d 376 (Minn. Ct. App. 2001)—§ 25.46
- Blaz v. Molin Concrete Products Co., 309 Minn. 382, 244 N.W.2d 277 (1976)—§ 60.70
- BLC Ins. Co. v. Vivent, 359 N.W.2d 315 (Minn. Ct. App. 1984)—§ 32.10
- Blohm v. Johnson, 523 N.W.2d 14 (Minn. Ct. App. 1994)—§ 30.65
- Blue Water Corp., Inc. v. O'Toole, 336 N.W.2d 279 (Minn. 1983)—§§ Cat. 80, Intro., 80.55, 80.66, 80.98
- Blumberg v. Palm, 238 Minn. 249, 56 N.W.2d 412 (1953)—§ 30.50
- Bly v. Gensmer, 386 N.W.2d 767 (Minn. Ct. App. 1986)—§ 85.82
- B.M.B. v. State Farm Fire and Cas. Co., 664 N.W.2d 817 (Minn. 2003)—§ 59.30
- BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996)—§§ Cat. 94, Intro., 94.10
- Board of Educ. of City of Minneapolis v. Heywood Mfg. Co., 154 Minn. 486, 192 N.W. 102 (1923)—§§ Cat. 52, Intro., 52.40
- Board of Regents of University of Minnesota v. Reid, 522 N.W.2d 344 (Minn. Ct. App. 1994)—§ 50.30
- Bodah v. Lakeville Motor Express, Inc., 663 N.W.2d 550 (Minn. 2003)—§ 72.20
- Boerger v. American General Ins. Co. of Minn., 257 Minn. 72, 100 N.W.2d 133 (1959)—§§ 23.10, 59.35
- Bohdan v. Alltool Mfg., Co., 411 N.W.2d 902 (Minn. Ct. App. 1987)—§ 60.75
- Bohn Mfg. Co. v. Hollis, 54 Minn. 223, 55 N.W. 1119 (1893)—§ 40.40
- Boitz v. Preblich, 405 N.W.2d 907 (Minn. Ct. App. 1987)—§§ Cat. 38, Intro., 38.70

## TABLE OF CASES

- Bol v. Cole, 561 N.W.2d 143 (Minn. 1997)—§ Cat. 25, Intro.
- Boland v. Garber, 257 N.W.2d 384 (Minn. 1977)—§ 25.47
- Boland v. Morrill, 275 Minn. 496, 148 N.W.2d 143 (1967)—§ 15.10
- Boland v. Morrill, 270 Minn. 86, 132 N.W.2d 711 (1965)—§ 30.10
- Bolander v. Bolander, 703 N.W.2d 529 (Minn. Ct. App. 2005)—§§ Cat. 20, Intro., 20.41
- Bolduc v. New York Fire Ins. Co., 244 Minn. 192, 69 N.W.2d 660 (1955)—§ 59.15
- Bolton v. Department of Human Services, 540 N.W.2d 523 (Minn. 1995)—§§ Cat. 50, Intro., 50.30
- Bolton v. Department of Human Services, State of Minn., 527 N.W.2d 149 (Minn. Ct. App. 1995)—§ Cat. 50, Intro.
- Bond v. Charlson, 374 N.W.2d 423 (Minn. 1985)—§ 20.77
- Bondy v. Allen, 635 N.W.2d 244 (Minn. Ct. App. 2001)—§ Cat. 48, Intro.
- Bonhiver v. Graff, 311 Minn. 111, 248 N.W.2d 291, 92 A.L.R.3d 371 (1976)—§§ Cat. 57, Intro., 57.20, Cat. 80, Intro., 80.75
- Bonniwell v. St. Paul Union Stockyards Co., 271 Minn. 233, 135 N.W.2d 499 (1965)—§ 85.25
- Boraas v. Carlson, 267 Minn. 478, 127 N.W.2d 439 (1964)—§ 25.12
- Boright, Matter of, 377 N.W.2d 9 (Minn. 1985)—§ 23.10
- Born v. Medico Life Ins. Co., 428 N.W.2d 585 (Minn. Ct. App. 1988)—§ 60.75
- Borris v. Cox, 245 Minn. 515, 73 N.W.2d 372 (1955)—§ 65.25
- Boutang v. Twin City Motor Bus Co., 248 Minn. 240, 80 N.W.2d 30 (1956)—§ 91.10
- Bouten v. Richard Miller Homes, Inc., 321 N.W.2d 895 (Minn. 1982)—§ 40.30
- Brack v. Brack, 218 Minn. 503, 16 N.W.2d 557 (1944)—§§ Cat. 20, Intro., 20.40
- Brady v. Kroll, 244 Minn. 525, 70 N.W.2d 354 (1955)—§§ Cat. 25, Intro., 25.16
- Braginsky v. State Farm Mut. Auto. Ins. Co., 624 N.W.2d 789 (Minn. Ct. App. 2001)—§ 65.92
- Branch A-38 of Joint Ditch No. 204 Martin and Faribault Counties, Matter of, 406 N.W.2d 524 (Minn. 1987)—§ 52.80
- Brandenburg v. Minnehaha Warehouse Liquors, 1996 WL 250556 (Minn. Ct. App. 1996)—§§ Cat. 85, Intro., 85.60
- Breimhorst v. Beckman, 227 Minn. 409, 35 N.W.2d 719 (1949)—§§ 55.32, Cat. 85, Intro., 85.40, 85.52
- Brickner v. One Land Development Co., 742 N.W.2d 706 (Minn. Ct. App. 2007)—§ 85.82
- Bridgeman-Russell Co. v. City of Duluth, 158 Minn. 509, 197 N.W. 971 (1924)—§ 85.55
- Bridgeplace Associates, L.L.C. v. Lazniarz, 2005 WL 1869657 (Minn. Ct. App. 2005)—§ 85.82
- Briggs Transp. Co. v. Ranzenberger, 299 Minn. 127, 217 N.W.2d 198 (1974)—§ 20.45
- Briglia v. City of St. Paul, 134 Minn. 97, 158 N.W. 794 (1916)—§§ Cat. 85, Intro., 85.63



- Brill v. Minnesota Mines, 200 Minn. 454, 274 N.W. 631, 112 A.L.R. 173 (1937)—§ Cat. 50, Intro.
- Britamco Underwriters, Inc. v. A & A Liquors of St. Cloud, 649 N.W.2d 867 (Minn. Ct. App. 2002)—§ Cat. 45, Intro.
- Brittain v. City of Minneapolis, 250 Minn. 376, 84 N.W.2d 646 (1957)—§§ Cat. 85, Intro., 85.63
- Britton v. Koep, 470 N.W.2d 518 (Minn. 1991)—§§ Cat. 50, Intro., 50.40
- Brodsky, In re Marriage of v. Brodsky, 639 N.W.2d 386 (Minn. Ct. App. 2002)—§ Cat. 20, Intro.
- Brody v. Finch University of Health Sciences/The Chicago Medical School, 298 Ill. App. 3d 146, 232 Ill. Dec. 419, 698 N.E.2d 257, 128 Ed. Law Rep. 1135 (2d Dist. 1998)—§ 57.40
- Broek v. Park Nicollet Health Services, 660 N.W.2d 439 (Minn. Ct. App. 2003)—§ Cat. 80, Intro.
- Brooks-Scanlon Corporation v. U.S., 265 U.S. 106, 44 S. Ct. 471, 68 L. Ed. 934 (1924)—§§ Cat. 52, Intro., 52.40
- Brooks v. Doherty, Rumble & Butler, 481 N.W.2d 120 (Minn. Ct. App. 1992)—§§ 50.30, Cat. 57, Intro., 57.25
- Brookshaw v. South St. Paul Feed, Inc., 381 N.W.2d 33 (Minn. Ct. App. 1986)—§ 55.35
- Broughton v. Maes, 378 N.W.2d 134 (Minn. Ct. App. 1985)—§§ Cat. 85, Intro., 85.40, 85.46
- Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P., 732 N.W.2d 209 (Minn. 2007)—§§ Cat. 80, Intro., 80.75
- Brua v. Minnesota Joint Underwriting Ass'n, 778 N.W.2d 294 (Minn. 2010)—§ 45.45
- Bruchas v. Preventive Care, Inc., 553 N.W.2d 440 (Minn. Ct. App. 1996)—§§ 55.25, 55.30
- Bruegger v. Faribault County Sheriff's Dept., 497 N.W.2d 260 (Minn. 1993)—§ 25.45
- Bryan v. Kissoon, 767 N.W.2d 491 (Minn. Ct. App. 2009)—§§ Cat. 57, Intro., 57.25
- Bryson v. Pillsbury Co., 573 N.W.2d 718 (Minn. Ct. App. 1998)—§§ Cat. 90, Intro., 90.10, 91.25
- Buckles v. State, 2009 WL 2498635 (Minn. Ct. App. 2009)—§ 30.20
- Bucknam v. Great Northern Ry. Co., 76 Minn. 373, 79 N.W. 98 (1899)—§ 60.20
- Bucko v. First Minnesota Sav. Bank, F.B.S., 471 N.W.2d 95 (Minn. 1991)—§ 94.10
- Bufkin v. City of Duluth, 291 N.W.2d 225 (Minn. 1980)—§§ Cat. 85, Intro., 85.63
- Bundy v. City of Fridley, 265 Minn. 549, 122 N.W.2d 585, 4 A.L.R.3d 1326 (1963)—§§ Cat. 45, Intro., 45.45
- Burck v. Pederson, 704 N.W.2d 532 (Minn. Ct. App. 2005)—§ 75.20
- Burdick v. Bongard, 256 Minn. 24, 96 N.W.2d 868 (1959)—§ 65.20
- Burgess v. Crafts, 184 Minn. 384, 238 N.W. 798 (1931)—§ 65.20
- Burgi v. Eckes, 354 N.W.2d 514 (Minn. Ct. App. 1984)—§ 20.80
- Burman Co. v. Zahler, 286 Minn. 400, 178 N.W.2d 234 (1970)—§ 30.10
- Bury v. City of Minneapolis, 258 Minn. 49, 102 N.W.2d 706 (1960)—§§ Cat. 85, Intro., 85.63



## TABLE OF CASES

- Busch v. Busch Const., Inc., 262 N.W.2d 377 (Minn. 1977)—§§ 15.10, 28.15, 90.15, 90.25, 91.10, 91.50
- Bussard v. College of St. Thomas, Inc., 294 Minn. 215, 200 N.W.2d 155 (1972)—§ 55.35
- Butler v. Engel, 243 Minn. 317, 68 N.W.2d 226 (1954)—§§ 25.45, 65.25
- Butler v. Northwestern Hosp. of Minneapolis, 202 Minn. 282, 278 N.W. 37 (1938)—§§ Cat. 75, Intro., 75.45, 75.95
- Butler v. Whitman, 193 Minn. 150, 258 N.W. 165 (1934)—§ 91.45
- Byram v. Aikin, 65 Minn. 87, 67 N.W. 807 (1896)—§ Cat. 50, Intro.
- Byrns v. St. Louis County, 295 N.W.2d 517 (Minn. 1980)—§§ 25.16, 27.15, Cat. 65, Intro., 65.35

## C

- Cady v. Coleman, 315 N.W.2d 593 (Minn. 1982)—§§ Cat. 20, Intro., 20.40, Cat. 45, Intro.
- Cafferty v. Garcia's of Scottsdale, Inc., 375 N.W.2d 850 (Minn. Ct. App. 1985)—§ 60.75
- Cahill v. Eastman, 18 Minn. 324, 18 Gil. 292, 1872 WL 3309 (1872)—§§ Cat. 25, Intro., 85.55
- Cairl v. State, 323 N.W.2d 20 (Minn. 1982)—§ Cat. 80, Intro.
- Cairl v. City of St. Paul, 268 N.W.2d 908, 100 A.L.R.3d 807 (Minn. 1978)—§§ Cat. 25, Intro., 85.55
- Callahan v. City of Virginia, 230 Minn. 55, 40 N.W.2d 841 (1950)—§§ Cat. 85, Intro., 85.63
- Callender v. Kalscheuer, 289 Minn. 532, 184 N.W.2d 811 (1971)—§§ Cat. 20, Intro., 20.30
- Cambern v. Hubbling, 307 Minn. 168, 238 N.W.2d 622, 18 U.C.C. Rep. Serv. 653 (1976)—§ 22.70
- Cambern v. Sioux Tools, Inc., 323 N.W.2d 795 (Minn. 1982)—§§ 28.15, 30.65, 75.95, 75.98
- Campbell v. Valley State Agency, 407 N.W.2d 109 (Minn. Ct. App. 1987)—§§ Cat. 80, Intro., 80.75
- Canada By and Through Landy v. McCarthy, 567 N.W.2d 496 (Minn. 1997)—§§ 14.15, 15.20, Cat. 25, Intro., 27.20, Cat. 90, Intro., 90.15, 91.40
- Canadian Universal Ins. Co., Ltd. v. Fire Watch, Inc., 258 N.W.2d 570 (Minn. 1977)—§ Cat. 59, Intro.
- Capital Warehouse Co. v. McGill-Warner-Farnham Co., 276 Minn. 108, 149 N.W.2d 31 (1967)—§§ Cat. 20, Intro., 20.20
- Cardinal Consulting Co. v. Circo Resorts, Inc., 297 N.W.2d 260 (Minn. 1980)—§§ Cat. 20, Intro., 20.60
- Carey v. Broadway Motors, Inc., 253 Minn. 333, 91 N.W.2d 753 (1958)—§ 32.15
- Carlin v. Superior Court, 13 Cal. 4th 1104, 56 Cal. Rptr. 2d 162, 920 P.2d 1347 (1996)—§ 75.25
- Carlson v. Burg, 137 Minn. 53, 162 N.W. 889 (1917)—§§ Cat. 57, Intro., 57.25
- Carlson v. Carlson, 363 N.W.2d 803 (Minn. Ct. App. 1985)—§ 23.10
- Carlson v. Fredsall, 228 Minn. 461, 37 N.W.2d 744 (1949)—§ 27.20
- Carlson v. Peterson, 205 Minn. 20, 284 N.W. 847 (1939)—§ 65.10

- Carlson v. SALA Architects, Inc., 732 N.W.2d 324 (Minn. Ct. App. 2007)—§ 23.10
- Carlson v. Thompson, 615 N.W.2d 387 (Minn. Ct. App. 2000)—§ 45.10
- Carnes v. St. Paul Union Stockyards Co., 164 Minn. 457, 205 N.W. 630 (1925)—§§ Cat. 25, Intro., 40.40
- Carpenter v. Minneapolis, St. P., R. & D. Elec. Traction Co., 133 Minn. 46, 157 N.W. 902 (1916)—§§ Cat. 48, Intro., 48.40
- Carpenter v. Nelson, 257 Minn. 424, 101 N.W.2d 918 (1960)—§§ 14.15, Cat. 90, Intro., 90.15
- Carpenter v. Vreeman, 409 N.W.2d 258 (Minn. Ct. App. 1987)—§ 20.76
- Carradine v. State, 511 N.W.2d 733 (Minn. 1994)—§ 50.30
- Carter v. Peace Officers Standards and Training Bd., 558 N.W.2d 267 (Minn. Ct. App. 1997)—§ 50.30
- Cavanaugh v. Burlington Northern R. Co., 941 F. Supp. 872 (D. Minn. 1996)—§§ 50.30, 50.94, 50.96
- Cede & Co. v. Technicolor, Inc., 634 A.2d 345 (Del. 1993)—§ 23.10
- Cederstrand v. Lutheran Brotherhood, 263 Minn. 520, 117 N.W.2d 213 (1962)—§§ Cat. 20, Intro., 20.10, 20.15, 20.40, 55.35
- Cerepak v. Revlon, Inc., 294 Minn. 268, 200 N.W.2d 33 (1972)—§ 75.32
- Chafoulas v. Peterson, 668 N.W.2d 642 (Minn. 2003)—§§ Cat. 50, Intro., 50.40
- Chalmers v. Kanawyer, 544 N.W.2d 795 (Minn. Ct. App. 1996)—§ 20.76
- Chatfield v. Sherwin-Williams Co., 266 N.W.2d 171, 24 U.C.C. Rep. Serv. 285 (Minn. 1978)—§ 22.65
- Chellico v. Martire, 227 Minn. 74, 34 N.W.2d 155 (1948)—§ 15.10
- Chergosky v. Crosstown Bell, Inc., 463 N.W.2d 522 (Minn. 1990)—§ Cat. 20, Intro.
- Cherne Contracting Corp. v. Wausau Ins. Companies, 572 N.W.2d 339 (Minn. Ct. App. 1997)—§ 23.10
- Children's Broadcasting Corp. v. Walt Disney Co., 245 F.3d 1008, 56 Fed. R. Evid. Serv. 1013 (8th Cir. 2001)—§ 23.10
- Chisago City, City of v. Holt, 360 N.W.2d 390 (Minn. Ct. App. 1985)—§ 52.45
- Christensen v. Milbank Ins. Co., 658 N.W.2d 580, 174 Ed. Law Rep. 1087 (Minn. 2003)—§§ 25.14, 32.20, 60.65
- Christians v. Grant Thornton, LLP, 733 N.W.2d 803 (Minn. Ct. App. 2007)—§ 80.75
- Christianson v. Chicago, St. P., M. & O. Ry. Co., 67 Minn. 94, 69 N.W. 640 (1896)—§§ Cat. 25, Intro., 27.10
- Christopherson v. Independent School Dist. No. 284, 354 N.W.2d 845, 19 Ed. Law Rep. 1184 (Minn. Ct. App. 1984)—§§ Cat. 28, Intro., 28.15, 91.45
- Christy v. Saliterman, 288 Minn. 144, 179 N.W.2d 288 (1970)—§§ 80.10, 80.55, 80.61, 91.10
- Church of Scientology of Minnesota v. Minnesota State Medical Ass'n Foundation, 264 N.W.2d 152 (Minn. 1978)—§§ Cat. 50, Intro., 50.45
- Church of the Nativity of Our Lord v. WatPro, Inc., 491 N.W.2d 1, 18 U.C.C. Rep. Serv. 2d 1017 (Minn. 1992)—§ 57.40
- Cimino v. Raymark Industries, Inc., 151 F.3d 297 (5th Cir. 1998)—§ 75.26

## TABLE OF CASES

- Cintrone v. Hertz Truck Leasing and Rental Service, 45 N.J. 434, 212 A.2d 769 (1965)—§ 75.45
- Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc., 624 N.W.2d 796 (Minn. Ct. App. 2001)—§ 60.80
- City Water Power Co. v. City of Fergus Falls, 113 Minn. 33, 128 N.W. 817 (1910)—§ 85.55
- Clarine v. Addison, 182 Minn. 310, 234 N.W. 295 (1931)—§§ Cat. 70, Intro., 70.30
- Clark v. Brings, 287 Minn. 73, 169 N.W.2d 407 (1969)—§§ Cat. 25, Intro., Cat. 38, Intro., 38.10
- Clark v. Brings, 284 Minn. 73, 169 N.W.2d 407 (1969)—§ Cat. 38, Intro.
- Clark v. Connor, 843 N.W.2d 785, 787–88 (Minn. Ct. App. 2014)—§ 38.91
- Clark v. Miller, 378 N.W.2d 838 (Minn. Ct. App. 1986)—§ 80.25
- Clark v. Peterson, 741 N.W.2d 136 (Minn. Ct. App. 2007)—§ 45.15
- Clark v. Rental Equipment Co., Inc., 300 Minn. 420, 220 N.W.2d 507 (1974)—§§ Cat. 75, Intro., 75.45, 75.95
- Clarke v. Eighth Ave. R. Co., 238 N.Y. 246, 144 N.E. 516, 37 A.L.R. 1 (1924)—§ 91.65
- Clements v. Swedish Hospital, 252 Minn. 1, 89 N.W.2d 162 (1958)—§ 80.37
- Clements Auto Co. v. Service Bureau Corp., 444 F.2d 169, 9 U.C.C. Rep. Serv. 189 (8th Cir. 1971)—§ 57.10
- Clements Auto Co. v. Service Bureau Corp., 298 F. Supp. 115 (D. Minn. 1969)—§ 57.10
- Clifford v. Peterson, 276 Minn. 142, 149 N.W.2d 75 (1967)—§ 65.25
- Cobbs v. Grant, 8 Cal. 3d 229, 104 Cal. Rptr. 505, 502 P.2d 1 (1972)—§ 80.25
- Coble v. Lacey, 252 Minn. 423, 90 N.W.2d 314 (1958)—§§ 25.12, Cat. 65, Intro., 65.10
- Coenen v. Buckman Bldg. Corp., 278 Minn. 193, 153 N.W.2d 329, 28 A.L.R.3d 592 (1967)—§ 25.10
- Cohen v. Cowles Media Co., 479 N.W.2d 387 (Minn. 1992)—§ 20.50
- Cohen v. Hirsch, 230 Minn. 512, 42 N.W.2d 51 (1950)—§ 65.35
- Cole v. Star Tribune, 581 N.W.2d 364 (Minn. Ct. App. 1998)—§ 50.45
- Collings v. Northwestern Hosp., 202 Minn. 139, 277 N.W. 910 (1938)—§ 25.50
- Collins v. Minnesota School of Business, Inc., 655 N.W.2d 320, 172 Ed. Law Rep. 957, 120 A.L.R.5th 799 (Minn. 2003)—§ 57.40
- Colstad v. Levine, 243 Minn. 279, 67 N.W.2d 648 (1954)—§ 10.45
- Commodore Hotel Fire and Explosion Cases, In re, 324 N.W.2d 245 (Minn. 1982)—§ 92.10
- Com'r of Transp., State ex rel. v. Kettleleson, 801 N.W.2d 160 (Minn. 2011)—§ Cat. 52, Intro.
- Connick v. Myers, 461 U.S. 138, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983)—§ Cat. 50, Intro.
- Connolly v. Nicolle Hotel, 254 Minn. 373, 95 N.W.2d 657, 74 A.L.R.2d 1227 (1959)—§§ 25.10, Cat. 80, Intro., 80.10, Cat. 85, Intro., 85.60



- Conover v. Northern States Power Co., 313 N.W.2d 397 (Minn. 1981)—  
§ 85.25
- Continental Ins. Co. v. Loctite Corp., 352 N.W.2d 460 (Minn. Ct. App.  
1984)—§ 75.20
- Continental Research, Inc. v. Cruttenden, Podesta & Miller, 222 F.  
Supp. 190 (D. Minn. 1963)—§§ 40.30, 40.40
- Continental Western Ins. Co. v. Toal, 309 Minn. 169, 244 N.W.2d 121  
(1976)—§ 59.30
- Contract Development Corp. v. Beck, 255 Ill. App. 3d 660, 194 Ill. Dec.  
423, 627 N.E.2d 760 (2d Dist. 1994)—§ 85.82
- Control Data Corp. v. Garrison, 305 Minn. 347, 233 N.W.2d 740  
(1975)—§ 57.10
- Cook v. Connolly, 366 N.W.2d 287 (Minn. 1985)—§ Cat. 80, Intro.
- Cook v. Greyhound Lines, Inc., 847 F. Supp. 725 (D. Minn. 1994)—  
§ 55.30
- Cook v. Person, 246 Minn. 119, 74 N.W.2d 389 (1956)—§ 25.12
- Cook v. Trovatten, 200 Minn. 221, 274 N.W. 165 (1937)—§ 25.40
- Coolidge by Coolidge v. St. Paul Fire and Marine Ins. Co., 523 N.W.2d 5  
(Minn. Ct. App. 1994)—§ Cat. 45, Intro.
- Cooper v. Friesen, 296 Minn. 160, 207 N.W.2d 742 (1973)—§ 65.30
- Copeland v. Hubbard Broadcasting, Inc., 526 N.W.2d 402 (Minn. Ct.  
App. 1995)—§ 85.10
- Cormican v. Parsons, 282 Minn. 94, 163 N.W.2d 41 (1968)—§ Cat. 28,  
Intro.
- Corn v. Sheppard, 179 Minn. 490, 229 N.W. 869 (1930)—§ 60.25
- Cornfeldt v. Tongen, 262 N.W.2d 684 (Minn. 1977)—§§ 25.47, Cat. 80,  
Intro., 80.25
- Cornwell v. Megins, 39 Minn. 407, 40 N.W. 610 (1888)—§§ Cat. 20,  
Intro., 20.42
- Corum v. Farm Credit Services, 628 F. Supp. 707 (D. Minn. 1986)—  
§ Cat. 50, Intro.
- Costello v. Sykes, 143 Minn. 109, 172 N.W. 907, 5 A.L.R. 250 (1919)—  
§ 20.76
- Coughlin v. LaBounty, 354 N.W.2d 48 (Minn. Ct. App. 1984)—§ 65.40
- County Ditch No. 21 of Redwood County, In re, 262 Minn. 210, 114  
N.W.2d 572 (1962)—§ 52.80
- Couture v. Novotny, 297 Minn. 305, 211 N.W.2d 172 (1973)—§ 91.45
- Covey v. Detroit Lakes Printing Co., a Div. of Forum Pub. Co., 490  
N.W.2d 138 (Minn. Ct. App. 1992)—§ Cat. 50, Intro.
- Cox v. Crown CoCo, Inc., 544 N.W.2d 490 (Minn. Ct. App. 1996)—  
§ 50.30
- Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 95 S. Ct. 1029, 43 L. Ed.  
2d 328 (1975)—§§ Cat. 72, Intro., 72.20
- CPJ Enterprises, Inc. v. Gernander, 521 N.W.2d 622 (Minn. Ct. App.  
1994)—§ Cat. 80, Intro.
- Cracraft v. City of St. Louis Park, 279 N.W.2d 801 (Minn. 1979)—  
§ 25.45
- Craigmile v. Sorenson, 248 Minn. 286, 80 N.W.2d 45 (1956)—§ 59.25
- Crawford v. Woodrich Const. Co., 239 Minn. 12, 57 N.W.2d 648  
(1953)—§ 27.20



## TABLE OF CASES

- Croaker ex rel. Croaker v. Mackenhausen, 592 N.W.2d 857 (Minn. 1999)—§§ Cat. 85, Intro., 85.19
- Crothers by Crothers v. Cohen, 384 N.W.2d 562, 1 U.C.C. Rep. Serv. 2d 72 (Minn. Ct. App. 1986)—§ 75.35
- Crowell v. Northwestern Life & Sav. Co., 99 Minn. 214, 108 N.W. 962 (1906)—§§ Cat. 20, Intro., 20.46
- Crowley v. Crowley, 219 Minn. 341, 18 N.W.2d 40 (1945)—§ 23.10
- Curtis Pub. Co. v. Butts, 388 U.S. 130, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967)—§§ Cat. 50, Intro., 50.40
- Cyrus v. Cyrus, 242 Minn. 180, 64 N.W.2d 538, 45 A.L.R.2d 1002 (1954)—§ 30.50

## D

- D.A.B. v. Brown, 570 N.W.2d 168 (Minn. Ct. App. 1997)—§ 23.10
- Dahl v. Charles Schwab & Co., Inc., 545 N.W.2d 918 (Minn. 1996)—§ 23.10
- Dahlin v. Fraser, 206 Minn. 476, 288 N.W. 851 (1939)—§ 60.20
- Dairyland Ins. Co. v. Implement Dealers Ins. Co., 294 Minn. 236, 199 N.W.2d 806 (1972)—§ Cat. 59, Intro.
- Dairy Stores, Inc. v. Sentinel Pub. Co., Inc., 104 N.J. 125, 516 A.2d 220 (1986)—§ 40.10
- Dakins v. Black, 195 Minn. 91, 261 N.W. 870 (1935)—§ Cat. 25, Intro.
- Dale Properties, LLC v. State, 638 N.W.2d 763 (Minn. 2002)—§ 52.45
- Daly v. McFarland, 812 N.W.2d 113 (Minn. 2012)—§§ 25.16, Cat. 28, Intro., 28.30, 28.90, Cat. 38, Intro.
- Dang v. St. Paul Ramsey Medical Center, Inc., 490 N.W.2d 653 (Minn. Ct. App. 1992)—§ 80.43
- Danielson v. Reeves, 211 Minn. 491, 1 N.W.2d 597 (1941)—§ 25.10
- Dart v. Pure Oil Co., 223 Minn. 526, 27 N.W.2d 555, 171 A.L.R. 885 (1947)—§ 25.45
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469, 37 Fed. R. Evid. Serv. 1 (1993)—§ 12.30
- Davies v. Land O'Lakes Racing Ass'n, 244 Minn. 248, 69 N.W.2d 642 (1955)—§ 85.19
- Davies & Davies Agency, Inc. v. Davies, 298 N.W.2d 127 (Minn. 1980)—§§ Cat. 20, Intro., 20.40
- Davis v. Re-Trac Mfg. Corp., 276 Minn. 116, 149 N.W.2d 37 (1967)—§ 57.10
- Dawley v. Thisius, 304 Minn. 453, 231 N.W.2d 555 (1975)—§ 55.34
- Dawydowycz v. Quady, 300 Minn. 436, 220 N.W.2d 478 (1974)—§ 91.10
- Day v. Amax, Inc., 701 F.2d 1258, 35 U.C.C. Rep. Serv. 1416 (8th Cir. 1983)—§§ Cat. 20, Intro., 20.15
- Deach v. St. Paul City Ry. Co., 215 Minn. 171, 9 N.W.2d 735 (1943)—§ Cat. 25, Intro.
- Dean v. St. Paul Union Depot Co., 41 Minn. 360, 43 N.W. 54 (1889)—§ 55.30
- Declaration of Trust by Bush, In re, 249 Minn. 36, 81 N.W.2d 615 (1957)—§ 23.10
- DeCook v. Rochester Intern. Airport Joint Zoning Bd., 796 N.W.2d 299 (Minn. 2011)—§ 52.10

- Delgado v. Lohmar, 289 N.W.2d 479 (Minn. 1979)—§§ Cat. 30, Intro., 30.65, 30.70, 48.25
- Deli v. Hasselmo, 542 N.W.2d 649, 106 Ed. Law Rep. 876 (Minn. Ct. App. 1996)—§ Cat. 20, Intro.
- Deli v. University of Minnesota, 511 N.W.2d 46, 88 Ed. Law Rep. 1175 (Minn. Ct. App. 1994)—§ 14.15
- Delinquent Real Estate Taxes in Kanabec County, In re, 164 Minn. 522, 204 N.W. 640 (1925)—§§ Cat. 52, Intro., 52.40
- Dellwo v. Pearson, 259 Minn. 452, 107 N.W.2d 859, 97 A.L.R.2d 866 (1961)—§§ Cat. 25, Intro., Cat. 28, Intro., Cat. 70, Intro., 70.15, 70.20
- Denelsbeck v. Wells Fargo & Co., 666 N.W.2d 339 (Minn. 2003)—§§ Cat. 20, Intro., 20.10
- Denman v. Gans, 607 N.W.2d 788 (Minn. Ct. App. 2000)—§ 85.80
- Denton v. Browns Mill Development Co., Inc., 275 Ga. 2, 561 S.E.2d 431 (2002)—§ Cat. 50, Intro.
- Denzer v. Great Northern Ry. Co., 188 Minn. 580, 248 N.W. 44 (1933)—§ 85.16
- Derrick v. Drolson Co., 244 Minn. 144, 69 N.W.2d 124 (1955)—§ 30.30
- DeSanti v. Youngs, 2003 WL 139393 (Minn. Ct. App. 2003)—§ Cat. 45, Intro.
- Despatch Oven Co. v. Rauenhorst, 229 Minn. 436, 40 N.W.2d 73 (1949)—§ 22.70
- Deutz-Allis Credit Corp. v. Jensen, 458 N.W.2d 163, 12 U.C.C. Rep. Serv. 2d 512 (Minn. Ct. App. 1990)—§ 20.65
- Dickhoff ex rel. Dickhoff v. Green, 836 N.W.2d 321 (Minn. 2013)—§§ Cat. 80, Intro., 80.10, 80.11, 80.94, 80.95, 80.96
- Diedrich v. State, 393 N.W.2d 677 (Minn. Ct. App. 1986)—§ 80.37
- Diesen v. Hessburg, 455 N.W.2d 446 (Minn. 1990)—§§ 50.10, 50.25, 50.40
- Dietz v. Dietz, 244 Minn. 330, 70 N.W.2d 281 (1955)—§ 23.10
- Doe v. Brainerd Intern. Raceway, Inc., 533 N.W.2d 617 (Minn. 1995)—§§ 25.45, Cat. 85, Intro., 85.16
- Doe v. F.P., 667 N.W.2d 493 (Minn. Ct. App. 2003)—§ 55.25
- Doe 169 v. Brandon, 845 N.W.2d 174 (Minn. 2014)—§§ Cat. 25, Intro., 25.10
- Dolan v. City of Tigard, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994)—§§ Cat. 52, Intro., 52.15
- Domagala v. Rolland, 805 N.W.2d 14 (Minn. 2011)—§§ Cat. 25, Intro., 25.10
- Domtar, Inc. v. Niagara Fire Ins. Co., 563 N.W.2d 724 (Minn. 1997)—§ 59.30
- Donald v. Moses, 254 Minn. 186, 94 N.W.2d 255 (1959)—§§ 28.25, Cat. 85, Intro., 85.60, 85.63
- Donaldson v. Young Women's Christian Ass'n of Duluth, 539 N.W.2d 789 (Minn. 1995)—§§ Cat. 48, Intro., 85.70
- Don Kral Inc. v. Lindstrom, 286 Minn. 37, 173 N.W.2d 921 (1970)—§ 20.81
- Donnay v. Boulware, 275 Minn. 37, 144 N.W.2d 711 (1966)—§§ Cat. 20, Intro., 55.35

## TABLE OF CASES

- Doren v. Northwestern Baptist Hosp. Ass'n, 240 Minn. 181, 60 N.W.2d 361, 42 A.L.R.2d 921 (1953)—§ 85.19
- Dorn v. Peterson, 512 N.W.2d 902 (Minn. Ct. App. 1994)—§ 50.30
- Dornfeld v. Oberg, 503 N.W.2d 115 (Minn. 1993)—§ 60.75
- Doyen v. Bauer, 211 Minn. 140, 300 N.W. 451 (1941)—§ 23.10
- Doyle v. City of Roseville, 524 N.W.2d 461 (Minn. 1994)—§§ Cat. 85, Intro., 85.60, 85.63
- Drager by Gutzman v. Aluminum Industries Corp., 495 N.W.2d 879 (Minn. Ct. App. 1993)—§§ 75.25, 85.49
- Duck v. Modern Roadways, Inc., 253 N.W.2d 822 (Minn. 1977)—§ 65.25
- Dukowitz v. Hannon Sec. Services, 841 N.W.2d 147 (Minn. 2014)—§ 55.65
- Duluth, City of v. State, 390 N.W.2d 757 (Minn. 1986)—§§ Cat. 52, Intro., 52.10
- Dumas v. Kessler & Maguire Funeral Home, Inc., 380 N.W.2d 544 (Minn. Ct. App. 1986)—§ Cat. 20, Intro.
- Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 105 S. Ct. 2939, 86 L. Ed. 2d 593 (1985)—§§ Cat. 50, Intro., 50.40, 50.45, 50.50, 50.65
- Durfee v. Rod Baxter Imports, Inc., 262 N.W.2d 349, 22 U.C.C. Rep. Serv. 945, 98 A.L.R.3d 1170 (Minn. 1977)—§ 22.70
- Durgin v. Cohen, 168 Minn. 77, 209 N.W. 532 (1926)—§ 60.70
- Duxbury v. Spex Feeds, Inc., 681 N.W.2d 380, 54 U.C.C. Rep. Serv. 2d 58 (Minn. Ct. App. 2004)—§§ Cat. 75, Intro., 75.45
- Dwyer v. Illinois Oil Co., 190 Minn. 616, 252 N.W. 837 (1934)—§§ Cat. 20, Intro., 20.41
- Dyrdal v. Golden Nuggets, Inc., 689 N.W.2d 779 (Minn. 2004)—§ 20.46
- Dyson v. Schmidt, 260 Minn. 129, 109 N.W.2d 262 (1961)—§ 60.30
- Dziubak v. Mott, 503 N.W.2d 771 (Minn. 1993)—§ Cat. 80, Intro.

## E

- Earle R. Hanson and Associates v. Farmers Co-op. Creamery Co. of Clear Lake, Wis., 403 F.2d 65 (8th Cir. 1968)—§ 23.10
- Easton Farmers Elevator Co. v. Chromalloy Am. Corp., 310 Minn. 568, 246 N.W.2d 705 (1976)—§ 22.10
- Ebenhoh v. Hodgman, 642 N.W.2d 104 (Minn. Ct. App. 2002)—§ 85.80
- Eckhardt v. Hanson, 196 Minn. 270, 264 N.W. 776, 107 A.L.R. 1 (1936)—§ 70.15
- Eddy v. Republic Nat. Life Ins. Co., 290 N.W.2d 174 (Minn. 1980)—§ 59.40
- Edgewater Motels, Inc. v. Gatzke, 277 N.W.2d 11 (Minn. 1979)—§§ 25.47, 30.15, 30.90, 30.91
- Edling v. Stanford Tp., 381 N.W.2d 881 (Minn. Ct. App. 1986)—§ Cat. 20, Intro.
- Egner v. States Realty Co., 223 Minn. 305, 26 N.W.2d 464, 170 A.L.R. 500 (1947)—§ Cat. 20, Intro.
- Ehle v. Prosser, 293 Minn. 183, 197 N.W.2d 458 (1972)—§ 85.80
- Eichten v. Central Minn. Co-op. Power Ass'n of Redwood County, 224 Minn. 180, 28 N.W.2d 862 (1947)—§§ 91.55, 91.65



- 80 South Eighth Street Ltd. Partnership v. Carey-Canada, Inc., 486 N.W.2d 393, 18 U.C.C. Rep. Serv. 2d 69 (Minn. 1992)—§ Cat. 75, Intro.
- Eilers v. Coy, 582 F. Supp. 1093 (D. Minn. 1984)—§ 60.70
- Eischen v. Crystal Valley Co-op., 835 N.W.2d 629 (Minn. Ct. App. 2013)—§§ Cat. 28, Intro., 28.30
- Eisert v. Greenberg Roofing & Sheet Metal Co., 314 N.W.2d 226 (Minn. 1982)—§ 91.75
- Eklund v. Lund, 301 Minn. 359, 222 N.W.2d 348 (1974)—§§ 10.25, 65.30
- Eklund v. Vincent Brass and Aluminum Co., 351 N.W.2d 371 (Minn. Ct. App. 1984)—§ 60.75
- Electro-Craft Corp. v. Controlled Motion, Inc., 332 N.W.2d 890 (Minn. 1983)—§§ 23.10, 40.20, 40.25
- Elliason v. Western Coal & Coke Co., 162 Minn. 213, 202 N.W. 485 (1925)—§ 30.15
- Elstrom v. Independent School Dist. No. 270, 533 N.W.2d 51, 100 Ed. Law Rep. 733 (Minn. Ct. App. 1995)—§§ Cat. 50, Intro., 50.30, 50.40, 60.75
- Elwood v. Rice County, 423 N.W.2d 671 (Minn. 1988)—§§ 25.40, 25.90
- Elwood v. Rice County, 423 N.W.2d 671 (Minn. 1988)—§§ 25.40, 60.20
- Ely, City of v. Conan, 91 Minn. 127, 97 N.W. 737 (1903)—§§ Cat. 52, Intro., 52.40
- Empire Fire & Marine Ins. Co. v. Williams, 265 Minn. 333, 121 N.W.2d 580 (1963)—§ Cat. 45, Intro.
- Employers Liability Assur. Corp. v. Morse, 261 Minn. 259, 111 N.W.2d 620 (1961)—§ 92.10
- Employers Mut. Companies v. Nordstrom, 495 N.W.2d 855 (Minn. 1993)—§ 65.91
- Employers Mut. Ins. Co. v. Oakes Mfg. Co., 356 N.W.2d 719 (Minn. Ct. App. 1984)—§ Cat. 28, Intro.
- Employers Mut. Liability Ins. Co. of Wis. v. Eagles Lodge of Hallock, Minn., 282 Minn. 477, 165 N.W.2d 554 (1969)—§ Cat. 20, Intro.
- Enger's Will, In re, 225 Minn. 229, 30 N.W.2d 694, 1 A.L.R.2d 1048 (1948)—§ 23.10
- Enghusen v. H. Christiansen & Sons, Inc., 259 Minn. 442, 107 N.W.2d 843 (1961)—§ 91.75
- Engler v. Illinois Farmers Ins. Co., 706 N.W.2d 764 (Minn. 2005)—§§ Cat. 25, Intro., 91.10
- Engquist v. Loyas, 803 N.W.2d 400 (Minn. 2011)—§§ Cat. 38, Intro., 38.30, 38.40
- Equilon Enterprises v. Consumer Cause, Inc., 29 Cal. 4th 53, 124 Cal. Rptr. 2d 507, 52 P.3d 685 (2002)—§ Cat. 50, Intro.
- Erickson-Hellekson-Vye Co. v. A. Wells Co., 217 Minn. 361, 15 N.W.2d 162 (Minn. 1944)—§ 23.10
- Erickson v. Curtis Inv. Co., 447 N.W.2d 165 (Minn. 1989)—§ 85.75
- Erickson By and Through Bunker v. American Honda Motor Co., Inc., 455 N.W.2d 74 (Minn. Ct. App. 1990)—§ 75.35
- Ernster v. Eltgroth, 149 Minn. 39, 182 N.W. 709 (1921)—§ 50.20



## TABLE OF CASES

- Ertz v. Produce Exchange Co. of Minneapolis, 79 Minn. 140, 81 N.W. 737 (1900)—§ 40.40
- Esmailzadeh v. Johnson and Speakman, 869 F.2d 422 (8th Cir. 1989)—§ 59.15
- Estrada v. Hanson, 215 Minn. 353, 10 N.W.2d 223 (1943)—§§ Cat. 20, Intro., 20.40
- Evans v. Jorgenson, 182 Minn. 282, 234 N.W. 292 (1931)—§ 60.70
- Eveleth, City of v. Ruble, 302 Minn. 249, 225 N.W.2d 521 (1974)—§ 80.75
- Evertson v. McKay, 124 Minn. 260, 144 N.W. 950 (1914)—§ 60.51
- Ewing v. George Benz & Sons, 224 Minn. 508, 28 N.W.2d 733 (1947)—§§ Cat. 28, Intro., 28.15

## F

- Faber v. Chicago G. W. Ry. Co., 62 Minn. 433, 64 N.W. 918 (1895)—§§ Cat. 48, Intro., 48.40
- Faber v. Roelofs, 298 Minn. 16, 212 N.W.2d 856 (1973)—§§ 91.55, 91.65
- Fabio v. Bellomo, 504 N.W.2d 758 (Minn. 1993)—§ Cat. 80, Intro.
- Fabio v. Credit Bureau of Hutchinson, Inc., 210 F.R.D. 688 (D. Minn. 2002)—§ 72.10
- Faegre & Benson, LLP v. R & R Investors, 772 N.W.2d 846 (Minn. Ct. App. 2009)—§ 60.65
- Fahrendorff ex rel. Fahrendorff v. North Homes, Inc., 597 N.W.2d 905 (Minn. 1999)—§§ 30.20, 30.92
- Fahy v. Templin, 361 N.W.2d 158 (Minn. Ct. App. 1985)—§§ Cat. 90, Intro., 90.20
- Faimon v. Winona State University, 540 N.W.2d 879, 105 Ed. Law Rep. 727 (Minn. Ct. App. 1995)—§ 20.50
- Fake v. Addicks, 45 Minn. 37, 47 N.W. 450 (1890)—§§ Cat. 25, Intro., Cat. 38, Intro., 38.10
- Falcone v. Branker, 135 N.J. Super. 137, 342 A.2d 875 (Law Div. 1975)—§ 65.40
- Farmer's State Bank of Darwin v. Swisher, 631 N.W.2d 796 (Minn. 2001)—§ Cat. 28, Intro.
- Farmers State Bank of Russell v. Western Nat. Mut. Ins. Co., 454 N.W.2d 651 (Minn. Ct. App. 1990)—§ 59.25
- Farr v. Armstrong Rubber Co., 288 Minn. 83, 179 N.W.2d 64, 8 U.C.C. Rep. Serv. 512 (1970)—§§ Cat. 25, Intro., Cat. 75, Intro., 75.20, 75.30, 75.31
- Father A v. Moran, 469 N.W.2d 503 (Minn. Ct. App. 1991)—§§ 91.55, 91.65
- Fawcett v. Heimbach, 591 N.W.2d 516 (Minn. Ct. App. 1999)—§§ 60.65, 60.93
- Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc., 456 N.W.2d 434 (Minn. 1990)—§ 12.35
- Feges v. Perkins Restaurants, Inc., 483 N.W.2d 701 (Minn. 1992)—§§ 55.60, 91.47
- Fehling v. Levitan, 382 N.W.2d 901 (Minn. Ct. App. 1986)—§§ 80.90, 80.92
- Feldman v. Lederle Laboratories, 97 N.J. 429, 479 A.2d 374, 39 U.C.C. Rep. Serv. 866 (1984)—§ 75.25

- Felt v. Elmquist, 104 Minn. 33, 115 N.W. 746 (1908)—§ 60.86
- Femrite v. Abbott Northwestern Hosp., 568 N.W.2d 535 (Minn. Ct. App. 1997)—§ 25.45
- Fenton v. Minneapolis St. Ry. Co., 252 Minn. 75, 89 N.W.2d 404 (1958)—§ 48.15
- Ferguson v. Northern States Power Co., 307 Minn. 26, 239 N.W.2d 190 (1976)—§§ 10.45, Cat. 25, Intro., 28.92, 85.55
- Ferraro v. Taylor, 197 Minn. 5, 265 N.W. 829 (1936)—§§ 27.20, 75.45
- Ferrell v. Cross, 557 N.W.2d 560 (Minn. 1997)—§§ Cat. 50, Intro., 50.25, 50.30, 50.90, 60.75
- Fest v. Olson, 138 Minn. 31, 163 N.W. 798 (1917)—§ 45.10
- Fewell v. Tappan, 223 Minn. 483, 27 N.W.2d 648 (1947)—§ 23.10
- Fewings v. Mendenhall, 88 Minn. 336, 93 N.W. 127 (1903)—§§ Cat. 48, Intro., 48.25, 48.30
- Fieve v. Emmeck, 248 Minn. 122, 78 N.W.2d 343 (1956)—§ 48.10
- Fiihr, In re, 289 Minn. 322, 184 N.W.2d 22 (1971)—§ 91.70
- Filipczak v. International Broth. of Elec. Workers, Local 110, 292 Minn. 486, 195 N.W.2d 433 (1972)—§ 85.52
- Fine v. City of Minneapolis, 368 N.W.2d 324 (Minn. Ct. App. 1985)—§ 52.35
- First American Nat. Bank v. State, 322 N.W.2d 344 (Minn. 1982)—§§ Cat. 52, Intro., 52.40
- First & American Nat. Bank of Duluth v. Whiteside, 207 Minn. 537, 292 N.W. 770 (1940)—§§ Cat. 20, Intro., 20.42
- First Bank of Minnesota v. Olson, 557 N.W.2d 621 (Minn. Ct. App. 1997)—§ Cat. 80, Intro.
- First Nat. Bank of Shakopee v. Edison Homes, Inc., 415 N.W.2d 442 (Minn. Ct. App. 1987)—§ 20.80
- Fischer v. Hooper, 143 N.H. 585, 732 A.2d 396 (1999)—§§ Cat. 72, Intro., 72.25
- Fitzer v. Bloom, 253 N.W.2d 395 (Minn. 1977)—§ 45.50
- Flaherty v. Minneapolis & St. L. Ry. Co., 251 Minn. 345, 87 N.W.2d 633 (1958)—§ 48.10
- Flanagan v. Lindberg, 404 N.W.2d 799 (Minn. 1987)—§ 10.45
- Flaugh v. Egan Chevrolet, 202 Minn. 615, 279 N.W. 582 (1938)—§ 32.15
- Fleming v. Hallum, 350 N.W.2d 417 (Minn. Ct. App. 1984)—§ 25.50
- Flom v. Flom, 291 N.W.2d 914 (Minn. 1980)—§§ Cat. 25, Intro., 27.10, 85.25
- Florenzano v. Olson, 387 N.W.2d 168 (Minn. 1986)—§§ 25.37, Cat. 28, Intro., 30.92, Cat. 57, Intro., 57.10, 57.15, 57.20, 57.90, 59.25
- Florida Star, The v. B.J.F., 491 U.S. 524, 109 S. Ct. 2603, 105 L. Ed. 2d 443 (1989)—§§ Cat. 72, Intro., 72.20
- Flynn v. American Home Products Corp., 627 N.W.2d 342 (Minn. Ct. App. 2001)—§ 23.10
- Foley v. Allard, 427 N.W.2d 647 (Minn. 1988)—§ 30.30
- Foley v. Honeywell, Inc., 488 N.W.2d 268 (Minn. 1992)—§ 55.33
- Foley v. WCCO Television, Inc., 449 N.W.2d 497 (Minn. Ct. App. 1989)—§ 50.25

## TABLE OF CASES

- Foley v. City of West Allis, 113 Wis. 2d 475, 335 N.W.2d 824 (1983)—  
§§ Cat. 28, Intro., 28.15
- Ford v. Minneapolis St. R. Co., 98 Minn. 96, 107 N.W. 817 (1906)—  
§§ Cat. 48, Intro., 48.35
- Ford v. Stevens, 280 Minn. 16, 157 N.W.2d 510 (1968)—§§ Cat. 48,  
Intro., 48.10
- Forde v. Northern Pac. Ry. Co., 241 Minn. 246, 63 N.W.2d 11 (1954)—  
§ 25.55
- Ford Motor Co. v. Zahn, 265 F.2d 729 (8th Cir. 1959)—§ 75.35
- Forseth v. Duluth-Superior Transit Co., 202 Minn. 447, 278 N.W. 904  
(1938)—§§ Cat. 28, Intro., 28.15
- Forster v. R.J. Reynolds Tobacco Co., 437 N.W.2d 655, 8 U.C.C. Rep.  
Serv. 2d 370 (Minn. 1989)—§ 75.25
- Foss v. Kincade, 766 N.W.2d 317 (Minn. 2009)—§ 85.25
- 451 Corp. v. Pension System for Policemen and Firemen of City of  
Detroit, 310 N.W.2d 922 (Minn. 1981)—§§ Cat. 20, Intro., 20.20
- Fox Sports Net North, L.L.C. v. Minnesota Twins Partnership, 319 F.3d  
329 (8th Cir. 2003)—§§ Cat. 20, Intro., 20.10
- Francis v. Piper, 597 N.W.2d 922 (Minn. Ct. App. 1999)—§ Cat. 80,  
Intro.
- Frank v. Stiegler, 250 Minn. 447, 84 N.W.2d 912 (1957)—§ 27.15
- Frank v. Winter, 528 N.W.2d 910 (Minn. Ct. App. 1995)—§ 59.40
- Frank B. Connet Lumber Co. v. New Amsterdam Cas. Co., 236 F.2d 117  
(8th Cir. 1956)—§ 59.35
- Franklin v. Carpenter, 309 Minn. 419, 244 N.W.2d 492 (1976)—§§ Cat.  
20, Intro., 20.40
- Franklin Mfg. Co. v. Union Pac. R. Co., 311 Minn. 296, 248 N.W.2d 324  
(1976)—§§ Cat. 20, Intro., 20.60
- Franklin Theatre Corp. v. City of Minneapolis, 293 Minn. 519, 198  
N.W.2d 558 (1972)—§ 57.10
- Frankson v. Design Space Intern., 394 N.W.2d 140 (Minn. 1986)—  
§§ Cat. 50, Intro., 50.15
- Fredericksen v. Henke, 167 Minn. 356, 209 N.W. 257, 46 A.L.R. 785  
(1926)—§ 85.80
- Fredrich v. Independent School Dist. No. 720, 465 N.W.2d 692, 65 Ed.  
Law Rep. 1241 (Minn. Ct. App. 1991)—§ Cat. 20, Intro.
- Freeman v. Ace Telephone Ass'n, 404 F. Supp. 2d 1127 (D. Minn.  
2005)—§ 55.65
- Freeman v. Duluth Clinic, Inc., 334 N.W.2d 626 (Minn. 1983)—§§ Cat.  
20, Intro., 20.41
- Freeman v. City of Minneapolis, 219 Minn. 202, 17 N.W.2d 364  
(1945)—§§ Cat. 85, Intro., 85.63
- Fremont 66, Inc. v. Maryland Cas. Co., 1992 WL 54934 (Minn. Ct. App.  
1992)—§ Cat. 80, Intro.
- Freude v. Berzins, 379 N.W.2d 174 (Minn. Ct. App. 1985)—§ 65.25
- Freundschuh v. Freundschuh, 559 N.W.2d 706 (Minn. Ct. App. 1997)—  
§ 23.10
- Frey v. Montgomery Ward & Co., 258 N.W.2d 782 (Minn. 1977)—  
§§ Cat. 25, Intro., 27.10, 75.25, 75.26, 75.95, 75.96



- Frey v. Ramsey County Community Human Services, 517 N.W.2d 591 (Minn. Ct. App. 1994)—§ 60.75
- Frey v. Snelgrove, 269 N.W.2d 918 (Minn. 1978)—§§ 15.35, 15.40, 28.91
- Friedell v. Blakely Printing Co., 163 Minn. 226, 203 N.W. 974 (1925)—§ 50.30
- Frieler v. Carlson Marketing Group, Inc., 751 N.W.2d 558 (Minn. 2008)—§ 30.20
- Frisch v. Bassett, 1996 WL 104770 (Minn. Ct. App. 1996)—§ 45.60
- Frohreich v. Gammon, 28 Minn. 476, 11 N.W. 88 (1881)—§ 22.70
- Froslee v. Lund's State Bank of Vining, 131 Minn. 435, 155 N.W. 619 (1915)—§ 50.30
- Frye v. Anderson, 248 Minn. 478, 80 N.W.2d 593 (1957)—§§ 32.15, 32.16
- Frykman v. University of Minnesota-Duluth, 611 N.W.2d 379 (Minn. Ct. App. 2000)—§ 85.25
- Fuller v. City of Mankato, 248 Minn. 342, 80 N.W.2d 9 (1956)—§§ Cat. 85, Intro., 85.63, 85.65
- Funchess v. Cecil Newman Corp., 632 N.W.2d 666 (Minn. 2001)—§§ Cat. 25, Intro., Cat. 85, Intro.
- Furlev Sales and Associates, Inc. v. North American Automotive Warehouse, Inc., 325 N.W.2d 20 (Minn. 1982)—§§ 40.30, 40.40
- Fussner v. Andert, 261 Minn. 347, 113 N.W.2d 355 (1961)—§ 91.75

## G

- Gaare v. Melbostad, 186 Minn. 96, 242 N.W. 466 (1932)—§ 50.50
- Gabrielson v. Warnemunde, 443 N.W.2d 540, 88 A.L.R.4th 237 (Minn. 1989)—§ 57.20
- Gadach v. Benton County Co-op. Ass'n, 236 Minn. 507, 53 N.W.2d 230 (1952)—§ Cat. 50, Intro.
- Gaertner v. Rees, 259 Minn. 299, 107 N.W.2d 365 (1961)—§ 57.10
- Gaffney v. St. Paul City Ry. Co., 81 Minn. 459, 84 N.W. 304 (1900)—§ 48.15
- Ganje v. Schuler, 659 N.W.2d 261 (Minn. Ct. App. 2003)—§ 85.80
- Gardner v. Germain, 264 Minn. 61, 117 N.W.2d 759 (1962)—§ 27.10
- Gartner v. Eikill, 319 N.W.2d 397 (Minn. 1982)—§ 20.76
- Garvis v. Employers Mut. Cas. Co., 497 N.W.2d 254 (Minn. 1993)—§ 59.15
- Gates v. Discovery Communications, Inc., 34 Cal. 4th 679, 21 Cal. Rptr. 3d 663, 101 P.3d 552 (2004)—§ 72.20
- Gates Rubber Co. v. Porwoll, 395 N.W.2d 92 (Minn. Ct. App. 1986)—§ 55.35
- Gee v. Minnesota State Colleges and Universities, 700 N.W.2d 548, 200 Ed. Law Rep. 358 (Minn. Ct. App. 2005)—§§ 55.65, 55.66
- Geislinger v. Village of Watkins, 269 Minn. 116, 130 N.W.2d 62 (1964)—§ 25.10
- General Cas. Co. of Wisconsin v. Mid-Continent Agencies, Inc., 485 N.W.2d 147 (Minn. Ct. App. 1992)—§ 23.10
- George v. Estate of Baker, 724 N.W.2d 1 (Minn. 2006)—§§ Cat. 25, Intro., 27.10, 48.10, 91.85



## TABLE OF CASES

- Geraci v. Eckankar, 526 N.W.2d 391 (Minn. Ct. App. 1995)—§ Cat. 50, Intro.
- German Mut. Ins. Co. v. Yeager, 554 N.W.2d 116 (Minn. Ct. App. 1996)—§ 60.10
- Germann v. F.L. Smithe Mach. Co., 395 N.W.2d 922 (Minn. 1986)—§§ Cat. 75, Intro., 75.25, 75.40
- Germolus v. Sausser, 83 Minn. 141, 85 N.W. 946 (1901)—§ 60.30
- Gertken v. Farmers Elevator of Kensington, Minn., Inc., 411 N.W.2d 550 (Minn. Ct. App. 1987)—§ Cat. 65, Intro.
- Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974)—§§ 40.10, Cat. 50, Intro., 50.40, 50.45, 50.50, 50.55, 50.65, 50.95, 50.96
- Getz v. Standard Oil Co., 168 Minn. 347, 210 N.W. 78 (1926)—§ 91.75
- Gibbs v. Almstrom, 145 Minn. 35, 176 N.W. 173, 11 A.L.R. 227 (1920)—§ 91.45
- Gibson v. Coldwell Banker Burnet, 659 N.W.2d 782 (Minn. Ct. App. 2003)—§ 23.10
- Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc., 844 N.W.2d 210 (Minn. 2014)—§ 40.35
- Gilbert v. Christiansen, 259 N.W.2d 896 (Minn. 1977)—§ 38.80
- Gilbertson v. Leininger, 599 N.W.2d 127 (Minn. 1999)—§ Cat. 85, Intro.
- Gillespie v. Great Northern Ry. Co., 124 Minn. 1, 144 N.W. 466 (1913)—§ 27.20
- Gillson v. Osborne, 220 Minn. 122, 19 N.W.2d 1 (1945)—§ 48.15
- Gilmore v. Walgreen Co., 759 N.W.2d 433 (Minn. Ct. App. 2009)—§ 85.25
- Gimmestad v. Rose Bros. Co., 194 Minn. 531, 261 N.W. 194 (1935)—§ 85.19
- Glaesemann v. Village of New Brighton, 268 Minn. 432, 130 N.W.2d 43 (1964)—§ 45.50
- Glass Service Co., Inc. v. State Farm Mut. Auto. Ins. Co., 530 N.W.2d 867 (Minn. Ct. App. 1995)—§ 40.35
- Glatz v. Thein, 47 Minn. 278, 50 N.W. 127 (1891)—§ 50.15
- Gleason v. Metropolitan Council Transit Operations, 582 N.W.2d 216 (Minn. 1998)—§§ 25.40, 25.90
- Glenna v. Sullivan, 310 Minn. 162, 245 N.W.2d 869, 87 A.L.R.3d 160 (1976)—§ Cat. 80, Intro.
- Glorvigen v. Cirrus Design Corp., 816 N.W.2d 572 (Minn. 2012)—§ 75.25
- Gniadck v. Northwestern Imp. & Boom Co., 73 Minn. 87, 75 N.W. 894 (1898)—§ 92.15
- Goblirsch v. Western Land Roller Co., 310 Minn. 471, 246 N.W.2d 687, 20 U.C.C. Rep. Serv. 869 (1976)—§ 75.20
- Godbout v. Norton, 262 N.W.2d 374 (Minn. 1977)—§ 80.55
- Godeen v. Bennett, 265 Minn. 179, 120 N.W.2d 867 (1963)—§ 25.12
- Goeb v. Tharaldson, 615 N.W.2d 800 (Minn. 2000)—§ 12.30
- Goeden v. Thompson, 289 Minn. 293, 184 N.W.2d 8 (1971)—§ 25.12
- Goin v. Premo, 196 Minn. 74, 264 N.W. 219 (1935)—§ 91.15
- Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413 (Minn. 2002)—§ Cat. 80, Intro.

- Goodrich v. McCannel, 382 N.W.2d 235 (Minn. Ct. App. 1986)—§ 80.25
- Gorath v. Rockwell Intern., Inc., 441 N.W.2d 128 (Minn. Ct. App. 1989)—§ 75.35
- Gorco Const. Co. v. Stein, 256 Minn. 476, 99 N.W.2d 69 (1959)—§§ Cat. 20, Intro., 20.20
- Gorham v. Benson Optical, 539 N.W.2d 798 (Minn. Ct. App. 1995)—§§ Cat. 20, Intro., 20.50
- Gould v. Winona Gas Co., 100 Minn. 258, 111 N.W. 254 (1907)—§ 85.55
- Gow v. Turnquist, 474 N.W.2d 182 (Minn. Ct. App. 1991)—§ 85.16
- Graalum v. Radisson Ramp, Inc., 245 Minn. 54, 71 N.W.2d 904 (1955)—§§ Cat. 85, Intro., 85.60
- Gradjelick v. Hance, 646 N.W.2d 225 (Minn. 2002)—§§ 25.45, Cat. 85, Intro., 85.40
- Graeber v. Anderson, 237 Minn. 20, 53 N.W.2d 642 (1952)—§§ Cat. 85, Intro., 85.43
- Graff v. Robert M. Swendra Agency, Inc., 800 N.W.2d 112 (Minn. 2011)—§ 59.40
- Graffunder v. City of Mahtomedi, 376 N.W.2d 282 (Minn. Ct. App. 1985)—§ 60.80
- Gramling v. Memorial Blood Centers of Minnesota, 601 N.W.2d 457 (Minn. Ct. App. 1999)—§§ 23.10, 80.61, 80.64
- Grant v. City of Duluth, 672 F.2d 677 (8th Cir. 1982)—§ 90.30
- Gray v. Badger Min. Corp., 676 N.W.2d 268 (Minn. 2004)—§§ Cat. 25, Intro., 75.26
- Gray v. Badger Mining Corp., 664 N.W.2d 881 (Minn. Ct. App. 2003)—§ 75.26
- Greenwood v. Evergreen Mines Co., 220 Minn. 296, 19 N.W.2d 726 (1945)—§§ 15.15, 85.10
- Gresser v. Hotzler, 604 N.W.2d 379 (Minn. Ct. App. 2000)—§§ Cat. 20, Intro., 20.20
- Greuling v. Wells Fargo Home Mortgage, Inc., 690 N.W.2d 757 (Minn. Ct. App. 2005)—§ 57.20
- Gribble v. Pioneer Press Co., 34 Minn. 342, 25 N.W. 710 (1885)—§ 50.20
- Griffiths v. Lovelette Transfer Co., Inc., 313 N.W.2d 602 (Minn. 1981)—§§ Cat. 28, Intro., 28.25, 28.30
- Grimes v. Toensing, 201 Minn. 541, 277 N.W. 236 (1938)—§ Cat. 20, Intro.
- Grisim v. TapeMark Charity Pro-Am Golf Tournament, 415 N.W.2d 874 (Minn. 1987)—§ Cat. 28, Intro.
- Gronquist v. Olson, 242 Minn. 119, 64 N.W.2d 159 (1954)—§ 15.15
- Gross v. General Inv. Co., 194 Minn. 23, 259 N.W. 557 (1935)—§ 91.75
- Gross v. Hoag, 251 Minn. 217, 87 N.W.2d 542 (1958)—§ 65.10
- Gross v. Powell, 288 Minn. 386, 181 N.W.2d 113, 8 U.C.C. Rep. Serv. 268 (1970)—§ 22.25
- Grossman Investments v. State by Humphrey, 571 N.W.2d 47 (Minn. Ct. App. 1997)—§§ Cat. 52, Intro., 52.40
- Gross on Behalf of Gross v. Running, 403 N.W.2d 243 (Minn. Ct. App. 1987)—§§ Cat. 22, Intro., Cat. 75, Intro., 75.20

## TABLE OF CASES

- Group Health Plan, Inc. v. Philip Morris Inc., 621 N.W.2d 2 (Minn. 2001)—§ 57.40
- Grouse v. Group Health Plan, Inc., 306 N.W.2d 114 (Minn. 1981)—§§ Cat. 20, Intro., 20.50, 55.35
- Grubb v. State, 433 N.W.2d 915 (Minn. Ct. App. 1988)—§ 85.80
- Grundtner v. University of Minnesota, 730 N.W.2d 323, 218 Ed. Law Rep. 705 (Minn. Ct. App. 2007)—§§ 55.65, 55.66
- Gryc v. Dayton-Hudson Corp., 297 N.W.2d 727 (Minn. 1980)—§§ 25.47, Cat. 70, Intro.
- Guhlke v. Roberts Truck Lines, 268 Minn. 141, 128 N.W.2d 324 (1964)—§ 30.10
- Guile v. Greenberg, 192 Minn. 548, 257 N.W. 649 (1934)—§ 28.25
- Gunderson v. Harrington, 632 N.W.2d 695 (Minn. 2001)—§§ Cat. 25, Intro., 55.32
- Gwin v. Gappa, 394 N.W.2d 530 (Minn. Ct. App. 1986)—§ 59.10

## H

- Haage v. Steies, 555 N.W.2d 7 (Minn. Ct. App. 1996)—§ 25.45
- Habeck v. Ouverson, 669 N.W.2d 907 (Minn. Ct. App. 2003)—§ 85.31
- Haeussler v. Braun, 314 N.W.2d 4, 25 A.L.R.4th 657 (Minn. 1981)—§§ Cat. 52, Intro., 52.15
- Hafner v. Iverson, 343 N.W.2d 634 (Minn. 1984)—§ 27.20
- Hagberg v. Colonial & Pac. Frigidways, Inc., 279 Minn. 396, 157 N.W.2d 33 (1968)—§ 30.10
- Hage v. Stade, 304 N.W.2d 283 (Minn. 1981)—§ 25.45
- Hagen v. Burmeister & Associates, Inc., 633 N.W.2d 497 (Minn. 2001)—§ 40.25
- Hagen v. Martin County, 253 Minn. 367, 91 N.W.2d 657 (1958)—§ 52.80
- Hahn v. City of Ortonville, 238 Minn. 428, 57 N.W.2d 254 (1953)—§§ Cat. 45, Intro., 45.25, 45.30
- Haile v. Sutherland, 598 N.W.2d 424 (Minn. Ct. App. 1999)—§ 80.22
- Hall v. City of Anoka, 256 Minn. 134, 97 N.W.2d 380 (1959)—§§ Cat. 85, Intro., 85.63
- Hall v. Ashland Oil Co., 625 F. Supp. 1515 (D. Conn. 1986)—§ 75.26
- Halla v. Norwest Bank Minnesota, N.A., 601 N.W.2d 449, 39 U.C.C. Rep. Serv. 2d 1104 (Minn. Ct. App. 1999)—§ 60.65
- Hallada v. Great Northern Ry., 244 Minn. 81, 69 N.W.2d 673 (1955)—§ 91.85
- Halla Nursery, Inc. v. Baumann-Furrie & Co., 454 N.W.2d 905 (Minn. 1990)—§ 80.75
- Halseth v. State Farm Mut. Auto. Ins. Co., 268 N.W.2d 730 (Minn. 1978)—§ 65.92
- Halvorson v. American Hoist & Derrick Co., 307 Minn. 48, 240 N.W.2d 303 (1976)—§ 75.20
- Hamilton v. Boyce, 234 Minn. 290, 48 N.W.2d 172 (1951)—§ 30.50
- Hammel v. Feigh, 143 Minn. 115, 173 N.W. 570 (1919)—§ 30.50
- Hammerlind v. Clear Lake Star Factory Skydiver's Club, 258 N.W.2d 590, 95 A.L.R.3d 1273 (Minn. 1977)—§ 48.10



- Hammond v. Minneapolis Street Ry. Co., 257 Minn. 330, 101 N.W.2d 441 (1960)—§§ 10.20, 65.35
- Hanks v. Hubbard Broadcasting, Inc., 493 N.W.2d 302 (Minn. Ct. App. 1992)—§ 57.25
- Hannah v. Jensen, 298 N.W.2d 52 (Minn. 1980)—§ Cat. 45, Intro.
- Hannem v. Pence, 40 Minn. 127, 41 N.W. 657 (1889)—§ 85.55
- Hansen v. Adent, 238 Minn. 540, 57 N.W.2d 681 (1953)—§ 30.50
- Hansen v. Hansen, 126 Minn. 426, 148 N.W. 457 (1914)—§§ Cat. 50, Intro., 50.30
- Hansen v. City of St. Paul, 298 Minn. 205, 214 N.W.2d 346 (1974)—§§ Cat. 85, Intro., 85.63
- Hansen v. St. Paul Metro Treatment Center, Inc., 609 N.W.2d 625 (Minn. Ct. App. 2000)—§ 30.65
- Hanson v. Bailey, 249 Minn. 495, 83 N.W.2d 252 (1957)—§§ 65.15, 65.20, Cat. 85, Intro., 85.13, 85.16
- Hanson v. Chicago, Rock Island and Pacific R. Co., 345 N.W.2d 736 (Minn. 1984)—§ 90.30
- Hanson v. Christensen, 275 Minn. 204, 145 N.W.2d 868 (1966)—§ 25.10
- Hanson v. Duluth M. & I. R. Ry. Co., 267 Minn. 24, 124 N.W.2d 486 (1963)—§ 48.45
- Hanson v. Ford Motor Co., 278 F.2d 586 (8th Cir. 1960)—§ 57.10
- Hanson v. Hall, 202 Minn. 381, 279 N.W. 227 (1938)—§ 92.10
- Hanson v. Nelson, 82 Minn. 220, 84 N.W. 742 (1901)—§§ Cat. 20, Intro., 20.42
- Hanson v. Roe, 373 N.W.2d 366 (Minn. Ct. App. 1985)—§ 85.46
- Hapka v. Paquin Farms, 458 N.W.2d 683, 12 U.C.C. Rep. Serv. 2d 60 (Minn. 1990)—§ Cat. 75, Intro.
- Hardenbergh v. St. Paul, M. & M.R. Co., 39 Minn. 3, 38 N.W. 625 (1888)—§ 48.15
- Hardy v. Anderson, 241 Minn. 478, 63 N.W.2d 814 (1954)—§ 10.25
- Harman v. Heartland Food Co., 614 N.W.2d 236 (Minn. Ct. App. 2000)—§ 40.30
- Harmon Contract Glazing, Inc. v. Libby-Owens-Ford Co., 493 N.W.2d 146 (Minn. Ct. App. 1992)—§ Cat. 75, Intro.
- Harris v. Breezy Point Lodge, Inc., 238 Minn. 322, 56 N.W.2d 655 (1953)—§ Cat. 38, Intro.
- Harrison ex rel. Harrison v. Harrison, 733 N.W.2d 451 (Minn. 2007)—§ 75.20
- Hart v. North Side Firestone Dealer, 235 Minn. 96, 49 N.W.2d 587 (1951)—§ 92.10
- Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 109 S. Ct. 2678, 105 L. Ed. 2d 562 (1989)—§§ Cat. 50, Intro., 50.40, 50.93
- Hartford Fire Ins. Co. v. Clark, 727 F. Supp. 2d 765 (D. Minn. 2010)—§ 30.20
- Hartmon v. National Heater Co., 240 Minn. 264, 60 N.W.2d 804 (1953)—§§ Cat. 25, Intro., 25.47
- Hartung v. Billmeier, 243 Minn. 148, 66 N.W.2d 784 (1954)—§§ Cat. 20, Intro., 20.20, 20.40



## TABLE OF CASES

- Hartwig v. Loyal Order of Moose, Brainerd Lodge No. 1246, 253 Minn. 347, 91 N.W.2d 794, 75 A.L.R.2d 459 (1958)—§§ Cat. 45, Intro., 45.25
- Hauenstein v. Loctite Corp., 347 N.W.2d 272 (Minn. 1984)—§§ Cat. 75, Intro., 75.25
- Haugen v. Dick Thayer Motor Co., 253 Minn. 199, 91 N.W.2d 585 (1958)—§ 27.15
- Haugen, Matter of, 278 N.W.2d 75 (Minn. 1979)—§ 20.46
- Haugland v. Canton, 250 Minn. 245, 84 N.W.2d 274 (1957)—§§ Cat. 20, Intro., 20.20
- Haverstock v. Wolf, 491 F. Supp. 447 (D. Minn. 1980)—§ 57.10
- Hay v. Dahle, 386 N.W.2d 808 (Minn. Ct. App. 1986)—§ 57.10
- H.B. By and Through Clark v. Whittemore, 552 N.W.2d 705 (Minn. 1996)—§§ 23.10, Cat. 25, Intro.
- Healy's Estate, In re, 243 Minn. 383, 68 N.W.2d 401 (1955)—§ 10.45
- Heath v. Wolesky, 181 Minn. 492, 233 N.W. 239 (1930)—§ 25.50
- Hebner v. Great Northern Ry. Co., 78 Minn. 289, 80 N.W. 1128 (1899)—§ Cat. 50, Intro.
- Hebrink v. Farm Bureau Life Ins. Co., 664 N.W.2d 414 (Minn. Ct. App. 2003)—§ 57.20
- Heffernan v. Whittlsey, 126 Minn. 163, 148 N.W. 63 (1914)—§ 40.40
- Heidemann v. City of Sleepy Eye, 195 Minn. 611, 264 N.W. 212 (1935)—§§ Cat. 85, Intro., 85.63
- Heil v. Standard Chemical Mfg. Co., 301 Minn. 315, 223 N.W.2d 37, 15 U.C.C. Rep. Serv. 345 (1974)—§ 22.65
- Hellman v. Julius Kolesar, Inc., 399 N.W.2d 654 (Minn. Ct. App. 1987)—§ 25.46
- Hempel v. Fairview Hospitals and Healthcare Services, Inc., 504 N.W.2d 487 (Minn. Ct. App. 1993)—§ 60.75
- Hendrickson v. State, 267 Minn. 436, 127 N.W.2d 165 (1964)—§§ Cat. 52, Intro., 52.40, 52.45, 52.50, 52.55
- Henkemeyer v. Boxall, 465 N.W.2d 437 (Minn. Ct. App. 1991)—§ Cat. 80, Intro.
- Hennepin County 1986 Recycling Bond Litigation, In re, 540 N.W.2d 494 (Minn. 1995)—§§ 20.55, 20.56, 59.35
- Hentges v. Schuttler, 247 Minn. 380, 77 N.W.2d 743 (1956)—§ 14.15
- Herbert v. Lando, 441 U.S. 153, 99 S. Ct. 1635, 60 L. Ed. 2d 115, 3 Fed. R. Evid. Serv. 822, 27 Fed. R. Serv. 2d 1 (1979)—§ 50.40
- Herbes v. Village of Holdingford, 267 Minn. 75, 125 N.W.2d 426 (1963)—§§ Cat. 45, Intro., 45.45, 45.50
- Herbst v. Northern States Power Co., 432 N.W.2d 463 (Minn. Ct. App. 1988)—§ 85.55
- Herooff v. Metropolitan Transit Com'n, 373 N.W.2d 355 (Minn. Ct. App. 1985)—§ 48.10
- Herrly v. Muzik, 374 N.W.2d 275 (Minn. 1985)—§§ Cat. 45, Intro., 45.35, 45.55
- Herrmann v. McMenomy & Severson, 590 N.W.2d 641 (Minn. 1999)—§ Cat. 80, Intro.
- Heveron v. Village of Belgrade, 288 Minn. 395, 181 N.W.2d 692 (1970)—§ 45.35

- Hickerson v. Bender, 500 N.W.2d 169 (Minn. Ct. App. 1993)—§ 85.80
- Higgins v. Minaghan, 78 Wis. 602, 47 N.W. 941 (1891)—§ 60.48
- High v. Supreme Lodge of the World, Loyal Order of Moose, 214 Minn. 164, 7 N.W.2d 675, 144 A.L.R. 810 (1943)—§§ 25.35, 50.20, 55.34
- Highview North Apartments v. Ramsey County, 323 N.W.2d 65 (Minn. 1982)—§ 60.80
- Hildebrandt v. Whirlpool Corp., 364 N.W.2d 394 (Minn. 1985)—§§ Cat. 25, Intro., 55.32
- Hildegarde, Inc. v. Wright, 244 Minn. 410, 70 N.W.2d 257 (1955)—§§ 32.20, 60.65
- Hill v. Gaertner, 253 Minn. 457, 92 N.W.2d 810 (1958)—§§ Cat. 85, Intro., 85.43
- Hill v. Minneapolis St. Ry. Co., 112 Minn. 503, 128 N.W. 831 (1910)—§§ Cat. 48, Intro., 48.10, 48.25
- Hill v. Okay Const. Co., Inc., 312 Minn. 324, 252 N.W.2d 107 (1977)—§§ Cat. 20, Intro., 20.10, Cat. 80, Intro.
- Hill v. Wilmington Chemical Corp., 279 Minn. 336, 156 N.W.2d 898 (1968)—§ 75.26
- Hilligoss v. Cargill, Inc., 649 N.W.2d 142 (Minn. 2002)—§ 10.20
- Hlubeck v. Beeler, 214 Minn. 484, 9 N.W.2d 252 (1943)—§ 23.10
- Hockemeyer v. Pooler, 268 Minn. 551, 130 N.W.2d 367 (1964)—§ 30.30
- Hocking v. Duluth, M. & I. R. Ry. Co., 263 Minn. 483, 117 N.W.2d 304 (1962)—§ 85.19
- Hodder v. Goodyear Tire & Rubber Co., 426 N.W.2d 826 (Minn. 1988)—§§ 75.40, 75.55
- Hoff v. Vacaville Unified School Dist., 19 Cal. 4th 925, 80 Cal. Rptr. 2d 811, 968 P.2d 522, 131 Ed. Law Rep. 513 (1998)—§ 70.25
- Holkestad v. Coca-Cola Bottling Co. of Minn., Inc., 288 Minn. 249, 180 N.W.2d 860 (1970)—§§ 25.50, 75.15, 75.32, 75.60
- Hollerich v. City of Good Thunder, 340 N.W.2d 665 (Minn. 1983)—§§ Cat. 45, Intro., 45.10, 45.30
- Hollerman v. F. H. Peavey & Co., 269 Minn. 221, 130 N.W.2d 534 (1964)—§ 57.10
- Hollinbeck v. Downey, 261 Minn. 481, 113 N.W.2d 9 (1962)—§ 28.30
- Holm v. Mutual Service Cas. Ins. Co., 261 N.W.2d 598 (Minn. 1977)—§ Cat. 59, Intro.
- Holm v. Sponco Mfg., Inc., 324 N.W.2d 207, 35 A.L.R.4th 848 (Minn. 1982)—§§ Cat. 75, Intro., 75.20, 75.25
- Holman Erection Co. v. Orville E. Madsen & Sons, Inc., 330 N.W.2d 693 (Minn. 1983)—§§ Cat. 20, Intro., 20.20
- Holmes v. Lilygren Motor Co., 201 Minn. 44, 275 N.W. 416 (1937)—§§ 32.15, 32.16
- Holmquist v. Miller, 367 N.W.2d 468 (Minn. 1985)—§ Cat. 45, Intro.
- Holt v. Swenson, 252 Minn. 510, 90 N.W.2d 724 (1958)—§§ Cat. 20, Intro., 20.10, 20.15, 20.20
- Holten v. Parker, 302 Minn. 167, 224 N.W.2d 139 (1974)—§ 65.25
- Holz v. Pearson, 229 Minn. 395, 39 N.W.2d 867 (1949)—§ 91.75
- Hondl v. Chicago Great Western Ry. Co., 249 Minn. 306, 82 N.W.2d 245 (1957)—§§ Cat. 28, Intro., 28.15

## TABLE OF CASES

- Hoover v. Norwest Private Mortg. Banking, a Div. of Norwest Funding, Inc., 605 N.W.2d 757 (Minn. Ct. App. 2000)—§ 55.25
- Hosley v. Armstrong Cork Co., 383 N.W.2d 289 (Minn. 1986)—§§ 15.40, Cat. 28, Intro., 28.91
- Houdek v. Guyse, 2005 WL 406217 (Minn. Ct. App. 2005)—§ 85.80
- Housing and Redevelopment Authority of City of St. Paul v. Kieffer Bros. Inv. & Const. Co., 284 Minn. 516, 170 N.W.2d 862 (1969)—§§ Cat. 52, Intro., 52.20, 52.40
- Housing and Redevelopment Authority of City of St. Paul v. Naegele Outdoor Advertising Co. of Twin Cities, Inc., 282 N.W.2d 537 (Minn. 1979)—§§ Cat. 52, Intro., 52.40
- Hoven v. Rice Memorial Hosp., 396 N.W.2d 569 (Minn. 1986)—§§ Cat. 25, Intro., 25.50
- Hovet v. City of Bagley, 325 N.W.2d 813 (Minn. 1982)—§ 85.31
- Howard v. Aid Ass'n for Lutherans, 272 N.W.2d 910 (Minn. 1978)—§ 59.25
- Howard Clothes, Inc. v. Howard Clothes Corp., 236 Minn. 291, 52 N.W.2d 753 (1952)—§ Cat. 40, Intro.
- Hoyum v. Duluth, W. & P. Ry. Co., 203 Minn. 35, 279 N.W. 729 (1938)—§ 48.45
- Hubbard v. United Press Intern., Inc., 330 N.W.2d 428, 38 A.L.R.4th 971 (Minn. 1983)—§ 60.75
- Hubenette v. Ostby, 213 Minn. 349, 6 N.W.2d 637 (1942)—§ 65.15
- Huber v. Niagara Mach. and Tool Works, 430 N.W.2d 465 (Minn. 1988)—§§ 75.25, 75.40
- Hudson v. Snyder Body, Inc., 326 N.W.2d 149 (Minn. 1982)—§§ Cat. 25, Intro., 25.10, Cat. 75, Intro., 75.10, 75.20, 75.31, 75.95
- Huebner by Lane v. Koelfgren, 519 N.W.2d 488 (Minn. Ct. App. 1994)—§§ Cat. 25, Intro., Cat. 28, Intro., Cat. 70, Intro., 70.20
- Hueper v. Goodrich, 314 N.W.2d 828 (Minn. 1982)—§§ 91.15, 92.10
- Hueper v. Goodrich, 263 N.W.2d 408 (Minn. 1978)—§ 12.30
- Hughes v. Becker, 260 Minn. 83, 108 N.W.2d 781 (1961)—§ 20.10
- Hughes v. Quarve & Anderson Co., 338 N.W.2d 422 (Minn. 1983)—§§ Cat. 85, Intro., 85.13, 85.19, 85.31
- Hughes v. Sinclair Marketing, Inc., 375 N.W.2d 875 (Minn. Ct. App. 1985)—§§ Cat. 57, Intro., 57.25
- Hunt v. IBM Mid America Employees Federal Credit Union, 384 N.W.2d 853 (Minn. 1986)—§§ 20.55, 55.35
- Hunter v. Hartman, 545 N.W.2d 699 (Minn. Ct. App. 1996)—§ Cat. 50, Intro.
- Hurlbut's Estate, In re, 126 Minn. 180, 148 N.W. 51 (1914)—§ 10.45
- Husbands v. City of Baudette, 2003 WL 22952754 (Minn. Ct. App. 2003)—§§ Cat. 45, Intro., 45.10
- Hutchings v. Bourdages, 291 Minn. 211, 189 N.W.2d 706 (1971)—§ 32.25
- Hutchins v. St. Paul, M. & M. Ry. Co., 44 Minn. 5, 46 N.W. 79 (1890)—§ 91.75
- Hutchinson v. Cotton, 236 Minn. 366, 53 N.W.2d 27, 31 A.L.R.2d 1465 (1952)—§ 25.45



- Hutchinson v. Proxmire, 443 U.S. 111, 99 S. Ct. 2675, 61 L. Ed. 2d 411 (1979)—§ Cat. 50, Intro.
- Huyen v. Driscoll, 479 N.W.2d 76 (Minn. Ct. App. 1991)—§ Cat. 50, Intro.
- Hy-Vee Food Stores, Inc. v. Minnesota Dept. of Health, 705 N.W.2d 181 (Minn. 2005)—§ Cat. 20, Intro.
- Hyduke v. Grant, 351 N.W.2d 675 (Minn. Ct. App. 1984)—§§ Cat. 80, Intro., 80.55

## I

- ICC Leasing Corp. v. Midwestern Machinery Co., 257 N.W.2d 551 (Minn. 1977)—§ 92.10
- Illinois Farmers Ins. Co. v. Brekke Fireplace Shoppe, Inc., 495 N.W.2d 216 (Minn. Ct. App. 1993)—§ 12.10
- Illinois Farmers Ins. Co. v. Tapemark Co., 273 N.W.2d 630 (Minn. 1978)—§§ 25.45, 27.20
- Imperial Developers, Inc. v. Seaboard Sur. Co., 518 N.W.2d 623 (Minn. Ct. App. 1994)—§§ 40.10, 40.15, Cat. 50, Intro., 50.20, 50.50
- Imperial Elevator Co. v. Hartford Acc. & Indem. Co., 163 Minn. 481, 204 N.W. 531, 42 A.L.R. 559 (1925)—§ 20.81
- Indianhead Truck Line, Inc. v. Anderson, 272 Minn. 497, 139 N.W.2d 271 (1965)—§ 15.10
- Industrial Graphics, Inc. v. Asahi Corp., 485 F. Supp. 793, 28 U.C.C. Rep. Serv. 647 (D. Minn. 1980)—§ 22.70
- Inland Const. Corp. v. Continental Cas. Co., 258 N.W.2d 881 (Minn. 1977)—§§ 32.20, 60.65
- Instrumentation Services, Inc. v. General Resource Corp., 283 N.W.2d 902 (Minn. 1979)—§ 20.46
- International Financial Services, Inc. v. Franz, 534 N.W.2d 261, 26 U.C.C. Rep. Serv. 2d 1137 (Minn. 1995)—§ 22.65
- International Financial Services, Inc. v. Franz, 515 N.W.2d 379, 23 U.C.C. Rep. Serv. 2d 1078 (Minn. Ct. App. 1994)—§ 22.70
- Iowa Elec. Light & Power Co. v. City of Fairmont, 243 Minn. 176, 67 N.W.2d 41 (1954)—§ 52.20
- Iowa Kemper Ins. Co. v. Stone, 269 N.W.2d 885 (Minn. 1978)—§ 59.30
- Iowa Nat. Mut. Ins. Co. v. Auto-Owners Ins. Co., 371 N.W.2d 627 (Minn. Ct. App. 1985)—§ 59.35
- Ironwood Springs Christian Ranch, Inc. v. Walk to Emmaus, 801 N.W.2d 193 (Minn. Ct. App. 2011)—§ Cat. 85, Intro.
- Iroquois Iron Co. v. Kruse, 241 F. 433 (C.C.A. 8th Cir. 1917)—§ 23.10
- Irrevocable Inter Vivos Trust Established by R. R. Kemske by Trust Agreement Dated October 24, 1969, Matter of, 305 N.W.2d 755 (Minn. 1981)—§ 23.10
- Isker v. Gardner, 360 N.W.2d 468 (Minn. Ct. App. 1985)—§§ Cat. 28, Intro., 28.25
- Isler v. Burman, 305 Minn. 288, 232 N.W.2d 818 (1975)—§ Cat. 85, Intro.
- Ismil v. L. H. Sowles Co., 295 Minn. 120, 203 N.W.2d 354 (1972)—§§ Cat. 30, Intro., 30.15, 30.90, 30.91



## TABLE OF CASES

- Iverson v. Independent School Dist. No. 547, 257 N.W.2d 572 (Minn. 1977)—§ 30.10  
Iverson v. Quam, 226 Minn. 290, 32 N.W.2d 596 (1948)—§§ Cat. 85, Intro., 85.43  
Iverson v. State Farm Mut. Auto. Ins. Co., 295 N.W.2d 573 (Minn. 1980)—§ Cat. 59, Intro.

## J

- Jablinske v. Eckstrom, 247 Minn. 140, 76 N.W.2d 654 (1956)—§ 65.30  
Jackson v. Reiling, 311 Minn. 562, 249 N.W.2d 896 (1977)—§§ Cat. 90, Intro., 90.10, 90.15, 91.25  
Jacobs v. Rosemount Dodge-Winnebago South, 310 N.W.2d 71, 32 U.C.C. Rep. Serv. 456 (Minn. 1981)—§ 22.70  
Jacobson v. Rochester Communications Corp., Inc., 410 N.W.2d 830 (Minn. 1987)—§§ Cat. 50, Intro., 50.40, 50.50, 50.65  
Jadwin v. Minneapolis Star and Tribune Co., 390 N.W.2d 437 (Minn. Ct. App. 1986)—§§ Cat. 50, Intro., 50.25  
Jadwin v. Minneapolis Star and Tribune Co., 367 N.W.2d 476 (Minn. 1985)—§§ Cat. 50, Intro., 50.35, 50.40, 50.45, 50.50, 50.55, 50.65  
Jam v. Independent School Dist. No. 709, 413 N.W.2d 165, 42 Ed. Law Rep. 393 (Minn. Ct. App. 1987)—§ Cat. 48, Intro.  
J & W Enterprises, Inc. v. Economy Sales, Inc., 486 N.W.2d 179 (Minn. Ct. App. 1992)—§ 75.25  
Jane Doe 43C v. Diocese of New Ulm, 787 N.W.2d 680 (Minn. Ct. App. 2010)—§ 57.10  
Janklow v. Minnesota Bd. of Examiners for Nursing Home Adm'rs, 552 N.W.2d 711 (Minn. 1996)—§ 25.40  
Janklow v. Newsweek, Inc., 788 F.2d 1300 (8th Cir. 1986)—§ Cat. 50, Intro.  
Jansen v. Minneapolis & St. L. Ry. Co., 112 Minn. 496, 128 N.W. 826 (1910)—§§ Cat. 48, Intro., 48.30  
Janssen v. Neal, 256 N.W.2d 292 (Minn. 1977)—§ 65.25  
Jedneak v. Minneapolis General Elec. Co., 212 Minn. 226, 4 N.W.2d 326 (1942)—§ 60.80  
Jeffries v. Metro-Mark, Inc., 45 F.3d 258 (8th Cir. 1995)—§ 50.25  
Jenkins v. Jenkins, 220 Minn. 216, 19 N.W.2d 389 (1945)—§ 55.31  
Jennie-O Foods, Inc. v. Safe-Glo Products Corp., 582 N.W.2d 576, 36 U.C.C. Rep. Serv. 2d 363 (Minn. Ct. App. 1998)—§ Cat. 75, Intro.  
Jensen v. Lundorff, 258 Minn. 275, 103 N.W.2d 887 (1960)—§ 40.30  
Jensen v. Walsh, 623 N.W.2d 247 (Minn. 2001)—§§ Cat. 94, Intro., 94.10  
Jenson v. Olson, 273 Minn. 390, 141 N.W.2d 488 (1966)—§ 50.30  
Jenson v. Touche Ross & Co., 335 N.W.2d 720 (Minn. 1983)—§ 25.47  
Jerry's Enterprises, Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd., 711 N.W.2d 811 (Minn. 2006)—§§ Cat. 80, Intro., 80.55, 80.66, 80.98  
Jeske v. George R. Wolff Holding Co., 250 Minn. 16, 83 N.W.2d 729 (1957)—§ 85.43  
J.J. Brooksbank Co., Inc. v. Budget Rent-A-Car Corp., 337 N.W.2d 372 (Minn. 1983)—§§ Cat. 20, Intro., 20.79

- J.M. v. Minnesota Dist. Council of Assemblies of God, 658 N.W.2d 589 (Minn. Ct. App. 2003)—§§ 55.20, 55.30
- Johnny's Plumbing, & Heating, Inc. v. Sperry Rand Corp.-Univac Div., 298 Minn. 294, 215 N.W.2d 63 (1974)—§ 20.20
- Johns v. Harborage I, Ltd., 585 N.W.2d 853 (Minn. Ct. App. 1998)—§ Cat. 25, Intro.
- Johnson v. Alford & Neville, Inc., 397 N.W.2d 591 (Minn. Ct. App. 1986)—§ 85.25
- Johnson v. American Family Mut. Ins. Co., 426 N.W.2d 419 (Minn. 1988)—§ 65.91
- Johnson v. Coca Cola Bottling Co. of Willmar, 235 Minn. 471, 51 N.W.2d 573 (1952)—§ 25.50
- Johnson v. Dirkswager, 315 N.W.2d 215 (Minn. 1982)—§ 50.30
- Johnson v. Fitzke, 234 Minn. 216, 48 N.W.2d 37 (1951)—§§ Cat. 20, Intro., 20.35
- Johnson v. Foundry, Inc., 702 N.W.2d 274 (Minn. Ct. App. 2005)—§ Cat. 45, Intro.
- Johnson v. Gustafson, 201 Minn. 629, 277 N.W. 252 (1938)—§§ 40.30, 40.40
- Johnson v. Holzemer, 263 Minn. 227, 116 N.W.2d 673, 99 A.L.R.2d 675 (1962)—§ 10.45
- Johnson v. Kruse, 205 Minn. 237, 285 N.W. 715 (1939)—§§ Cat. 20, Intro., 20.40
- Johnson v. Miller, 371 N.W.2d 94 (Minn. Ct. App. 1985)—§ Cat. 28, Intro.
- Johnson v. Moberg, 334 N.W.2d 411 (Minn. 1983)—§§ Cat. 45, Intro., 45.15
- Johnson v. Morris, 453 N.W.2d 31 (Minn. 1990)—§§ 25.40, 25.90, 60.20, 60.75
- Johnson v. National Life Ins. Co., 123 Minn. 453, 144 N.W. 218 (1913)—§ 59.25
- Johnson v. Nationstar Mortg., LLC, 2011 WL 6306681 (Minn. Ct. App. 2011)—§ 40.15
- Johnson v. Nicollet County, 387 N.W.2d 209 (Minn. Ct. App. 1986)—§§ Cat. 85, Intro., 85.63
- Johnson v. O'Brien, 258 Minn. 502, 105 N.W.2d 244, 88 A.L.R.2d 577 (1960)—§§ Cat. 85, Intro., 85.40
- Johnson v. Paynesville Farmers Union Co-op. Oil Co., 817 N.W.2d 693 (Minn. 2012)—§ 60.80
- Johnson v. Peterson, 734 N.W.2d 275 (Minn. Ct. App. 2007)—§ 55.20
- Johnson v. Peterson, 358 N.W.2d 484 (Minn. Ct. App. 1984)—§ 60.25
- Johnson v. City of Plymouth, 263 N.W.2d 603 (Minn. 1978)—§§ Cat. 52, Intro., 52.40
- Johnson v. Radde, 293 Minn. 409, 196 N.W.2d 478 (1972)—§ 40.40
- Johnson v. Ramsey County, 424 N.W.2d 800 (Minn. Ct. App. 1988)—§ 60.25
- Johnson v. Sampson, 167 Minn. 203, 208 N.W. 814, 46 A.L.R. 772 (1926)—§ 60.20
- Johnson v. State, 553 N.W.2d 40 (Minn. 1996)—§§ Cat. 25, Intro., 25.40, 25.90

## TABLE OF CASES

- Johnson v. State Farm Mut. Auto. Ins. Co., 574 N.W.2d 468 (Minn. Ct. App. 1998)—§ 65.92
- Johnson v. Townsend, 195 Minn. 107, 261 N.W. 859 (1935)—§ 25.16
- Johnson v. West Fargo Mfg. Co., 255 Minn. 19, 95 N.W.2d 497 (1959)—§§ 25.50, Cat. 28, Intro., 28.15
- Johnson Bros. Grocery, Inc. v. State Dept. of Highways by Spannaus, 304 Minn. 75, 229 N.W.2d 504 (1975)—§ 52.45
- John S. Schomburg, P.A. v. Garthe, 2001 WL 537056 (Minn. Ct. App. 2001)—§ 23.10
- Jonathan v. Kvaal, 403 N.W.2d 256 (Minn. Ct. App. 1987)—§ Cat. 75, Intro.
- Jones v. Fisher, 309 N.W.2d 726 (Minn. 1981)—§ Cat. 45, Intro.
- Jones v. Fleischhacker, 325 N.W.2d 633 (Minn. 1982)—§ 32.25
- Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979)—§ Cat. 80, Intro.
- Jostens, Inc. v. Mission Ins. Co., 387 N.W.2d 161 (Minn. 1986)—§ 59.15
- Jostens, Inc. v. National Computer Systems, Inc., 318 N.W.2d 691, 33 U.C.C. Rep. Serv. 1642, 30 A.L.R.4th 1229 (Minn. 1982)—§§ 40.20, 40.25
- Joyce v. Great Northern Ry. Co., 100 Minn. 225, 110 N.W. 975 (1907)—§ 40.40
- Judicial Ditch No. 17 in Meeker and Kandiyohi Counties, In re, 263 Minn. 547, 117 N.W.2d 392 (1962)—§ 52.80
- Judson v. Reardon, 16 Minn. 431, 16 Gil. 387, 1871 WL 3211 (1871)—§ 60.70
- Jussila v. U.S. Snowmobile Ass'n, 556 N.W.2d 234 (Minn. Ct. App. 1996)—§§ Cat. 28, Intro., 28.30

## K

- K.A.C. v. Benson, 527 N.W.2d 553, 59 A.L.R.5th 853 (Minn. 1995)—§§ 57.40, 60.15, 60.25, 60.75, 80.22, 80.25, 91.10
- Kachman v. Blosberg, 251 Minn. 224, 87 N.W.2d 687 (1958)—§§ Cat. 25, Intro., 25.16, 70.15
- Kaess v. Armstrong Cork Co., 403 N.W.2d 643 (Minn. 1987)—§ Cat. 25, Intro.
- Kallio v. Ford Motor Co., 407 N.W.2d 92 (Minn. 1987)—§§ 75.20, 75.25, 75.90
- Kaluza v. Home Ins. Co., 403 N.W.2d 230 (Minn. 1987)—§§ Cat. 25, Intro., 60.10
- Kamrath v. Suburban Nat. Bank, 363 N.W.2d 108 (Minn. Ct. App. 1985)—§ 57.40
- Kantorowicz v. VFW Post, No. 230, 349 N.W.2d 597 (Minn. Ct. App. 1984)—§ 28.25
- Kapla v. Lehti, 225 Minn. 325, 30 N.W.2d 685 (1948)—§ 25.12
- Karjala v. Johns-Manville Products Corp., 523 F.2d 155 (8th Cir. 1975)—§ 75.25
- Karlstad State Bank v. Fritsche, 392 N.W.2d 615 (Minn. Ct. App. 1986)—§ 57.10
- Kasner v. Gage, 281 Minn. 149, 161 N.W.2d 40 (1968)—§ 30.30



- Kavanagh v. The Golden Rule, 226 Minn. 510, 33 N.W.2d 697 (1948)—  
§ 14.15
- Kayser v. Jungbauer, 217 Minn. 140, 14 N.W.2d 337 (1944)—§ 32.15
- Kedrowski v. Czech, 244 Minn. 111, 69 N.W.2d 337 (1955)—§ 25.14
- Keegan v. G. Heilman Brewing Co., 129 Minn. 496, 152 N.W. 877  
(1915)—§§ Cat. 85, Intro., 85.40
- Keenan v. Computer Associates Intern., Inc., 13 F.3d 1266 (8th Cir.  
1994)—§ 50.35
- Keenan v. Hydra-Mac, Inc., 422 N.W.2d 741 (Minn. Ct. App. 1988)—  
§ 75.20
- Keenan v. International Falls-Koochiching County Airport Zoning Bd.,  
357 N.W.2d 397 (Minn. Ct. App. 1984)—§ 52.15
- Kellar v. VonHoltum, 568 N.W.2d 186 (Minn. Ct. App. 1997)—§ Cat.  
40, Intro.
- Kelley v. Green, 142 Minn. 82, 170 N.W. 922 (1919)—§ 85.80
- Kellogg v. Finnegan, 823 N.W.2d 454 (Minn. Ct. App. 2012)—§ 25.10
- Kelly v. Ellefson, 712 N.W.2d 759 (Minn. 2006)—§ 15.35
- Kelly v. First State Bank of Rothsay, 145 Minn. 331, 177 N.W. 347, 9  
A.L.R. 929 (1920)—§ 85.82
- Kelly v. City of Minneapolis, 598 N.W.2d 657 (Minn. 1999)—§§ Cat. 25,  
Intro., 25.40
- Kelly v. Southern Minnesota R. Co., 28 Minn. 98, 9 N.W. 588 (1881)—  
§ 25.47
- Kelo v. City of New London, Conn., 545 U.S. 469, 125 S. Ct. 2655, 162  
L. Ed. 2d 439, 10 A.L.R. Fed. 2d 733 (2005)—§ Cat. 52, Intro.
- Kennedy v. Flo-Tronics, Inc., 274 Minn. 327, 143 N.W.2d 827 (1966)—  
§ 57.10
- Kennedy v. Mobay Corp., 84 Md. App. 397, 579 A.2d 1191 (1990)—  
§ 75.26
- Kennedy v. Raught, 6 Minn. 235, 6 Gil. 155, 1861 WL 1860 (1861)—  
§ 10.45
- Keough v. St. Paul Milk Co., 205 Minn. 96, 285 N.W. 809 (1939)—  
§ 23.10
- Kervin v. News Tribune Co., 178 Minn. 61, 225 N.W. 906 (1929)—  
§ Cat. 50, Intro.
- Kesich v. Oliver Iron Min. Co., 188 Minn. 173, 246 N.W. 672 (1933)—  
§ 91.45
- Ketterer v. Independent School Dist. No. 1 of Chippewa County, 248  
Minn. 212, 79 N.W.2d 428 (1956)—§§ Cat. 20, Intro., 20.40
- Kidwell v. Sybaritic, Inc., 784 N.W.2d 220 (Minn. 2010)—§ 55.65
- Kieffer v. Wisconsin Ry., Light & Power Co., 137 Minn. 112, 162 N.W.  
1065 (1917)—§ 85.13
- Kimball v. Chicago, St. P., M. & O. Ry. Co., 128 Minn. 95, 150 N.W. 379  
(1914)—§ Cat. 85, Intro.
- Kime v. Koch, 227 Minn. 372, 35 N.W.2d 534 (1949)—§ 25.16
- King v. Duluth, M. & N. Ry. Co., 61 Minn. 482, 63 N.W. 1105 (1895)—  
§ 20.40
- Kinikin v. Heupel, 305 N.W.2d 589 (Minn. 1981)—§§ 60.25, Cat. 80,  
Intro., 80.25



## TABLE OF CASES

- Kirsebom v. Connelly, 486 N.W.2d 172 (Minn. Ct. App. 1992)—§ 65.25
- Kisch v. Skow, 305 Minn. 328, 233 N.W.2d 732 (1975)—§ Cat. 30, Intro.
- Kissoondath v. U.S. Fire Ins. Co., 620 N.W.2d 909 (Minn. Ct. App. 2001)—§ 23.10
- Kitsos v. Stanford, 291 So. 2d 632 (Fla. 3d DCA 1974)—§§ Cat. 20, Intro., 20.20
- Kitzman v. Postier & Kruger Co., 204 Minn. 343, 283 N.W. 542 (1939)—§ 23.10
- Kjesbo v. Ricks, 517 N.W.2d 585 (Minn. 1994)—§§ 40.30, 40.40
- Kleidon v. Glascock, 215 Minn. 417, 10 N.W.2d 394 (1943)—§ 60.70
- Klein v. First Edina Nat. Bank, 293 Minn. 418, 196 N.W.2d 619, 70 A.L.R.3d 1337 (1972)—§§ 23.10, 57.10, 57.30
- Kleinman v. Banner Laundry Co., 150 Minn. 515, 186 N.W. 123, 23 A.L.R. 479 (1921)—§ 25.50
- Klemmer v. Biersdorf, 137 Minn. 474, 163 N.W. 527 (1917)—§ 10.45
- Kleven v. Geigy Agricultural Chemicals, 303 Minn. 320, 227 N.W.2d 566, 16 U.C.C. Rep. Serv. 718 (1975)—§ 22.70
- Klingbeil v. Truesdell, 256 Minn. 360, 98 N.W.2d 134 (1959)—§ 25.10
- Kmetz v. Johnson, 261 Minn. 395, 113 N.W.2d 96 (1962)—§ 12.35
- Knaeble v. Cowles Media Co., 25 Media L. Rep. (BNA) 1860, 1997 WL 33021 (Minn. Ct. App. 1997)—§ Cat. 50, Intro.
- Knaus Truck Lines v. Donaldson, 235 Minn. 453, 51 N.W.2d 99 (1952)—§§ Cat. 20, Intro., 20.20, 20.30
- Knese v. Heidgerken, 358 N.W.2d 177 (Minn. Ct. App. 1984)—§§ Cat. 45, Intro., 45.10
- Knox v. Knox, 222 Minn. 477, 25 N.W.2d 225 (1946)—§ 23.10
- Knutson v. Nielsen, 256 Minn. 506, 99 N.W.2d 215 (1959)—§ 27.20
- Kobbe v. Chicago & N.W. Ry. Co., 173 Minn. 79, 216 N.W. 543 (1927)—§ 60.45
- Koch v. Mork Clinic, P.A., 540 N.W.2d 526 (Minn. Ct. App. 1995)—§ 12.30
- Koch v. Speiser, 145 Minn. 227, 176 N.W. 754 (1920)—§ 92.10
- Kociemba v. G.D. Searle & Co., 707 F. Supp. 1517 (D. Minn. 1989)—§ 75.40
- Koehler v. Abbott-Northwestern Hosp., Inc., 1997 WL 370376 (Minn. Ct. App. 1997)—§ 80.37
- Koehnen v. Dufuor, 590 N.W.2d 107 (Minn. 1999)—§ Cat. 45, Intro.
- Kohoutek v. Hafner, 383 N.W.2d 295, 89 A.L.R.4th 783 (Minn. 1986)—§ 80.22
- Kokesh v. Price, 136 Minn. 304, 161 N.W. 715, 23 A.L.R. 643 (1917)—§ 65.15
- Kolatz v. Kelly, 244 Minn. 163, 69 N.W.2d 649 (1955)—§ 65.10
- Konkel v. Erdman, 254 Minn. 307, 95 N.W.2d 73 (1959)—§ 65.25
- Kopet v. Klein, 275 Minn. 525, 148 N.W.2d 385 (1967)—§ 22.25
- Kopischke v. Chicago, St. P., M. & O. Ry. Co., 230 Minn. 23, 40 N.W.2d 834 (1950)—§ 92.10
- Koski v. Muccilli, 201 Minn. 549, 277 N.W. 229 (1938)—§ 32.15
- Kothe v. Tysdale, 233 Minn. 163, 46 N.W.2d 233 (1951)—§ 75.45
- K.R. v. Sanford, 605 N.W.2d 387 (Minn. 2000)—§§ 28.15, Cat. 45, Intro., 45.35

- Krafft v. Hirt, 260 Minn. 296, 110 N.W.2d 14 (1961)—§ 65.25
- Krahl v. Nine Mile Creek Watershed Dist., 283 N.W.2d 538 (Minn. 1979)—§§ Cat. 52, Intro., 52.10
- Kramer v. Kramer, 282 Minn. 58, 162 N.W.2d 708 (1968)—§ 10.25
- Kratzer v. Welsh Companies, LLC, 771 N.W.2d 14 (Minn. 2009)—§ 55.65
- Krein v. Raudabough, 406 N.W.2d 315 (Minn. Ct. App. 1987)—§ 75.20
- Krengel v. Midwest Automatic Photo, Inc., 295 Minn. 200, 203 N.W.2d 841 (1973)—§§ 28.15, Cat. 30, Intro., 30.65, 30.70
- Krieger v. City of St. Paul, 762 N.W.2d 274 (Minn. Ct. App. 2009)—§ 85.31
- Kroeger v. Lee, 270 Minn. 75, 132 N.W.2d 727 (1965)—§ 27.20
- Kroning v. State Farm Auto. Ins. Co., 567 N.W.2d 42 (Minn. 1997)—§§ Cat. 90, Intro., 90.20
- Kronzer v. First Nat. Bank of Minneapolis, 305 Minn. 415, 235 N.W.2d 187 (1975)—§§ Cat. 25, Intro., 27.10
- Kroyer, Matter of Estate of, 385 N.W.2d 31 (Minn. Ct. App. 1986)—§ 23.10
- Krueger v. Henschke, 210 Minn. 307, 298 N.W. 44 (1941)—§ 91.10
- Krueger v. State Farm Fire and Cas. Co., 510 N.W.2d 204 (Minn. Ct. App. 1993)—§ 59.15
- Krutsch v. Walter H. Collin GmBh Verfahrenstechnik Und Maschinenfabric, 495 N.W.2d 208 (Minn. Ct. App. 1993)—§ 75.25
- Kryzer v. Champlin American Legion No. 600, 494 N.W.2d 35 (Minn. 1992)—§§ Cat. 45, Intro., 45.30
- Kuehmichel v. Western Union Telegraph Co., 125 Minn. 74, 145 N.W. 788 (1914)—§ 30.15
- Kuether v. Locke, 261 Minn. 41, 110 N.W.2d 539 (1961)—§§ 25.50, 25.55
- Kunza v. Pantze, 531 N.W.2d 839 (Minn. 1995)—§ 45.30
- Kvanli v. Village of Watson, 272 Minn. 481, 139 N.W.2d 275 (1965)—§§ Cat. 45, Intro., 45.10, 45.30
- Kvidera v. Rotation Engineering and Mrg. Co., 705 N.W.2d 416 (Minn. Ct. App. 2005)—§ Cat. 20, Intro.
- Kwapien v. Starr, 400 N.W.2d 179 (Minn. Ct. App. 1987)—§ 91.35

## L

- La Belle v. Swanson, 248 Minn. 35, 78 N.W.2d 358 (1956)—§ 25.45
- Laidlaw v. Commercial Ins. Co. of Newark, 255 N.W.2d 807, 6 A.L.R.4th 413 (Minn. 1977)—§ Cat. 59, Intro.
- Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231 (Minn. 1998)—§§ Cat. 72, Intro., 72.10, 72.15, 72.20
- Lake Co. v. Molan, 269 Minn. 490, 131 N.W.2d 734 (1964)—§§ Cat. 20, Intro., 20.20, 20.25, 20.30
- Lakehead Constructors, Inc. v. Roger Sheehy Co., 304 Minn. 175, 229 N.W.2d 514 (1975)—§ 10.20
- Lambertson v. Cincinnati Welding Corp., 312 Minn. 114, 257 N.W.2d 679, 100 A.L.R.3d 335 (1977)—§§ 75.20, 75.98
- Lambrech v. Schreyer, 129 Minn. 271, 152 N.W. 645 (1915)—§§ 60.20, 60.25

## TABLE OF CASES

- Lammers v. Mason, 123 Minn. 204, 143 N.W. 359 (1913)—§ Cat. 25, Intro.
- Lamson v. Great Northern Ry. Co., 114 Minn. 182, 130 N.W. 945 (1911)—§§ Cat. 48, Intro., 48.35
- Landers v. National R.R. Passenger Corp., 345 F.3d 669 (8th Cir. 2003)—§ 50.30
- Lang v. Glusica, 387 N.W.2d 895 (Minn. Ct. App. 1986)—§ Cat. 28, Intro.
- Lange v. National Biscuit Co., 297 Minn. 399, 211 N.W.2d 783 (1973)—§ 30.20
- Langeland v. Farmers State Bank of Trimont, 319 N.W.2d 26 (Minn. 1982)—§§ Cat. 80, Intro., 80.64
- Langeslag v. KYMN Inc., 664 N.W.2d 860 (Minn. 2003)—§§ 60.75, 60.90
- Larsen v. Minneapolis Gas Co., 282 Minn. 135, 163 N.W.2d 755 (1968)—§§ 28.15, Cat. 30, Intro.
- Larsen v. Yelle, 310 Minn. 521, 246 N.W.2d 841 (1976)—§§ Cat. 80, Intro., 80.10, 80.19
- Larson v. Anchor Cas. Co., 249 Minn. 339, 82 N.W.2d 376 (1957)—§ 59.35
- Larson v. Archer-Daniels-Midland Co., 226 Minn. 315, 32 N.W.2d 649 (1948)—§ 60.65
- Larson v. Krostue, 110 Minn. 337, 125 N.W. 262 (1910)—§ 50.15
- Larson v. Lammers, 81 Minn. 239, 83 N.W. 981 (1900)—§ 92.10
- Larson v. Larson, 373 N.W.2d 287 (Minn. 1985)—§§ 23.10, Cat. 25, Intro.
- Larson v. City of Mankato, 239 Minn. 484, 59 N.W.2d 312 (1953)—§§ Cat. 85, Intro., 85.63
- Larson v. R.B. Wrigley Co., 183 Minn. 28, 235 N.W. 393 (1931)—§§ Cat. 50, Intro., 50.20, 50.50, 50.91
- Larson v. Wasemiller, 738 N.W.2d 300 (Minn. 2007)—§§ Cat. 80, Intro., 80.37
- Laurie v. Mueller, 248 Minn. 1, 78 N.W.2d 434 (1956)—§ 30.15
- Lavalle v. Kaupp, 240 Minn. 360, 61 N.W.2d 228, 40 A.L.R.2d 539 (1953)—§ 25.45
- LaValley v. National Family Ins. Corp., 517 N.W.2d 602 (Minn. Ct. App. 1994)—§ 59.10
- League General Ins. Co. v. Tvedt, 317 N.W.2d 40 (Minn. 1982)—§§ Cat. 20, Intro., 20.15
- LeBaron v. Minnesota Bd. of Public Defense, 499 N.W.2d 39 (Minn. Ct. App. 1993)—§§ Cat. 50, Intro., 50.30, 50.90
- Lechner v. Adelman, 369 N.W.2d 331 (Minn. Ct. App. 1985)—§ 85.80
- LeDoux v. Northwest Pub., Inc., 521 N.W.2d 59 (Minn. Ct. App. 1994)—§§ Cat. 50, Intro., 50.40
- Lee v. Crookston Coca-Cola Bottling Co., 290 Minn. 321, 188 N.W.2d 426 (1971)—§§ 25.50, Cat. 75, Intro., 75.20, 75.32, 75.60
- Lee v. Lee, 248 Minn. 496, 80 N.W.2d 529, 67 A.L.R.2d 176 (1957)—§ 27.20
- Lee v. Metropolitan Airport Com'n, 428 N.W.2d 815 (Minn. Ct. App. 1988)—§ 60.75



- Lee v. Seekins, 208 Minn. 546, 294 N.W. 842 (1940)—§§ Cat. 38, Intro., 38.10
- Lee v. Smith, 253 Minn. 401, 92 N.W.2d 117 (1958)—§ 25.16
- Lefkowitz v. Great Minneapolis Surplus Store, Inc., 251 Minn. 188, 86 N.W.2d 689 (1957)—§§ Cat. 20, Intro., 20.15, 20.35
- Lefto v. Hoggsbreath Enterprises, Inc., 581 N.W.2d 855 (Minn. 1998)—§ Cat. 45, Intro.
- Lefto v. Hoggsbreath Enterprises, Inc., 567 N.W.2d 746 (Minn. Ct. App. 1997)—§ Cat. 45, Intro.
- Leidig v. Honeywell, Inc., 850 F. Supp. 796 (D. Minn. 1994)—§ 55.30
- Leiendecker v. Asian Women United of Minnesota, 848 N.W.2d 224 (Minn. 2014)—§ Cat. 50, Intro.
- Leisy v. Northern Pac. Ry. Co., 230 Minn. 61, 40 N.W.2d 626 (1950)—§ 25.46
- Le May v. Minneapolis Street Ry. Co., 245 Minn. 192, 71 N.W.2d 826 (1955)—§ 91.35
- LensCrafters, Inc. v. Vision World, Inc., 943 F. Supp. 1481 (D. Minn. 1996)—§ 57.40
- Lenz v. Johnson, 265 Minn. 421, 122 N.W.2d 96 (1963)—§ 25.55
- Leoni v. Bemis Co., Inc., 255 N.W.2d 824, 21 U.C.C. Rep. Serv. 1057 (Minn. 1977)—§ 22.70
- Lesmeister v. Dilly, 330 N.W.2d 95 (Minn. 1983)—§§ Cat. 20, Intro., 20.60, 20.65, Cat. 25, Intro., 60.80, 92.15
- Lester Bldg. Systems v. Louisiana-Pacific Corp., 761 N.W.2d 877, 68 U.C.C. Rep. Serv. 2d 210 (Minn. 2009)—§ 22.70
- Lestico v. Kuehner, 204 Minn. 125, 283 N.W. 122 (1938)—§§ Cat. 25, Intro., 25.55, 27.10
- LeSueur Creamery, Inc. v. Haskon, Inc., 660 F.2d 342, 32 U.C.C. Rep. Serv. 683 (8th Cir. 1981)—§§ 22.25, 22.35
- Leubner v. Sterner, 493 N.W.2d 119 (Minn. 1992)—§§ Cat. 80, Intro., 91.40
- Leuer v. Johnson, 450 N.W.2d 363 (Minn. Ct. App. 1990)—§ 25.50
- Lewellin on Behalf of Heirs of Lewellin v. Huber, 465 N.W.2d 62 (Minn. 1991)—§§ Cat. 25, Intro., 27.10, Cat. 38, Intro., 38.30, 38.50, 38.60, 38.70, 38.90
- Lewerenz v. E. W. Wylie Co., 236 Minn. 94, 51 N.W.2d 834 (1952)—§ 91.75
- Lewis v. Citizens Agency of Madelia, Inc., 306 Minn. 194, 235 N.W.2d 831 (1975)—§§ Cat. 57, Intro., 57.25
- Lewis v. Equitable Life Assur. Soc. of the U.S., 389 N.W.2d 876, 62 A.L.R.4th 581 (Minn. 1986)—§§ Cat. 50, Intro., 50.15, 50.30, 50.35, 50.90, 50.94, 50.96, 55.35, 94.10
- Lhotka v. Larson, 307 Minn. 121, 238 N.W.2d 870 (1976)—§ 80.16
- Lickteig v. Alderson, Ondov, Leonard & Sween, P.A., 556 N.W.2d 557 (Minn. 1996)—§§ Cat. 50, Intro., 60.75, Cat. 72, Intro., 72.25, Cat. 80, Intro.
- Liess v. Lindemyer, 354 N.W.2d 556 (Minn. Ct. App. 1984)—§ 57.40
- Lietz v. Northern States Power Co., 718 N.W.2d 865 (Minn. 2006)—§ Cat. 25, Intro.
- Lillemoen v. Gregorich, 256 N.W.2d 628 (Minn. 1977)—§ 85.43



## TABLE OF CASES

- Lincoln v. Cambridge-Radisson Co., 235 Minn. 20, 49 N.W.2d 1 (1951)—§ 28.25
- Lincoln Grain, Inc. v. Coopers & Lybrand, 216 Neb. 433, 345 N.W.2d 300 (1984)—§ 80.75
- Lind v. Slowinski, 450 N.W.2d 353 (Minn. Ct. App. 1990)—§ 65.15
- Lindgren v. Harmon Glass Co., 489 N.W.2d 804 (Minn. Ct. App. 1992)—§ 50.25
- Lindner v. Lund, 352 N.W.2d 68 (Minn. Ct. App. 1984)—§ 65.40
- Lindstrom v. Yellow Taxi Co. of Minneapolis, 298 Minn. 224, 214 N.W.2d 672 (1974)—§§ Cat. 25, Intro., Cat. 48, Intro., 48.10
- Line Const. Ben. Fund (Lineco) v. Skeates, 563 N.W.2d 757 (Minn. Ct. App. 1997)—§ Cat. 45, Intro.
- Lines v. Ryan, 272 N.W.2d 896 (Minn. 1978)—§§ 15.40, Cat. 28, Intro., 28.91, 75.95
- Link v. Leichtnam, 252 Minn. 392, 90 N.W.2d 518 (1958)—§ 25.12
- Lipinski v. Lipinski, 227 Minn. 511, 35 N.W.2d 708 (1949)—§ 23.10
- Little Canada Charity Bingo Hall Ass'n v. Movers Warehouse, Inc., 498 N.W.2d 22 (Minn. Ct. App. 1993)—§ 20.79
- Ljungberg v. Village of North Mankato, 87 Minn. 484, 92 N.W. 401 (1902)—§§ Cat. 85, Intro., 85.65
- Lloyd F. Smith Co., Inc. v. Den-Tal-Ez, Inc., 491 N.W.2d 11, 18 U.C.C. Rep. Serv. 2d 1088 (Minn. 1992)—§ Cat. 75, Intro.
- L.M. ex rel. S.M. v. Karlson, 646 N.W.2d 537 (Minn. Ct. App. 2002)—§§ 30.20, 30.91, 30.92, 55.20
- Lockway v. Proulx, 283 Minn. 30, 166 N.W.2d 79 (1969)—§§ Cat. 85, Intro., 85.63
- Loewe v. City of Le Sueur, 277 Minn. 94, 151 N.W.2d 777 (1967)—§ 85.60
- Longbehn, 727 N.W.2d 160—§ 50.60
- Longbehn v. Schoenrock, 2010 WL 3000283 (Minn. Ct. App. 2010)—§ 50.50
- Longbehn v. Schoenrock, 727 N.W.2d 153 (Minn. Ct. App. 2007)—§§ 50.20, 50.50, 50.60
- Loudy v. Clarke, 45 Minn. 477, 48 N.W. 25 (1891)—§ 10.45
- Louis v. Louis, 636 N.W.2d 314 (Minn. 2001)—§§ 25.10, Cat. 28, Intro., 28.30, 85.25
- Louis DeGidio Oil and Gas Burner Sales and Service, Inc. v. Ace Engineering Co., Inc., 302 Minn. 19, 225 N.W.2d 217, 15 U.C.C. Rep. Serv. 801 (1974)—§ 22.70
- Lovejoy v. Minneapolis-Moline Power Implement Co., 248 Minn. 319, 79 N.W.2d 688 (1956)—§ 75.35
- Lowe v. Armour Packing Co., 148 Minn. 464, 182 N.W. 610 (1921)—§§ Cat. 90, Intro., 90.15
- Lowe v. U.S., 389 F.2d 108 (8th Cir. 1968)—§ 57.10
- Lowrey v. Dingmann, 251 Minn. 124, 86 N.W.2d 499 (1957)—§ 57.25
- Lubbers v. Anderson, 539 N.W.2d 398 (Minn. 1995)—§§ Cat. 25, Intro., 25.10
- Lucas v. Hamm, 56 Cal. 2d 583, 15 Cal. Rptr. 821, 364 P.2d 685 (1961)—§ Cat. 80, Intro.

- Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992)—§§ Cat. 52, Intro., 52.15
- Lucy v. Chicago, G. W. Ry. Co., 64 Minn. 7, 65 N.W. 944 (1896)—§ 48.30
- Lufkin v. Harvey, 131 Minn. 238, 154 N.W. 1097 (1915)—§ 91.70
- Lund v. Chicago and Northwestern Transp. Co., 467 N.W.2d 366 (Minn. Ct. App. 1991)—§ Cat. 50, Intro.
- Lundeen v. Renteria, 302 Minn. 142, 224 N.W.2d 132 (1974)—§ 60.70
- Lundell v. Cooperative Power Ass'n, 707 N.W.2d 376 (Minn. 2006)—§ Cat. 52, Intro.
- Lundgren v. Fultz, 354 N.W.2d 25 (Minn. 1984)—§§ Cat. 25, Intro., Cat. 80, Intro.
- Ly v. Nystrom, 615 N.W.2d 302 (Minn. 2000)—§ 57.40
- Lynghaug v. Payte, 247 Minn. 186, 76 N.W.2d 660, 56 A.L.R.2d 1090 (1956)—§ 25.45
- Lyon County v. First Nat. Bank, 166 Minn. 109, 207 N.W. 138 (1926)—§ 20.42
- Lyzhoft v. Waconia Farm Supply, 2013 WL 3368832 (Minn. Ct. App. 2013)—§§ 75.31, 75.45

## M

- Macho v. Mahowald, 374 N.W.2d 312 (Minn. Ct. App. 1985)—§ Cat. 38, Intro.
- MacRae v. Group Health Plan, Inc., 753 N.W.2d 711 (Minn. 2008)—§ Cat. 80, Intro.
- Maday v. Yellow Taxi Co. of Minneapolis, 311 N.W.2d 849 (Minn. 1981)—§ 27.15
- Madsen v. Park Nicollet Medical Center, 431 N.W.2d 855 (Minn. 1988)—§ 80.25
- Magee v. Odden, 220 Minn. 498, 20 N.W.2d 87 (1945)—§ 23.10
- Magee v. Wyeth Laboratories, Inc., 214 Cal. App. 2d 340, 29 Cal. Rptr. 322 (2d Dist. 1963)—§ 75.26
- Magnuson v. Rupp Mfg., Inc., 285 Minn. 32, 171 N.W.2d 201 (1969)—§ Cat. 75, Intro.
- Mahowald v. Minnesota Gas Co., 344 N.W.2d 856 (Minn. 1984)—§§ Cat. 25, Intro., 25.50, Cat. 85, Intro., 85.55
- Majerus v. Guelso, 262 Minn. 1, 113 N.W.2d 450 (1962)—§ 57.10
- Malcolmson v. Goodhue County Nat. Bank of Red Wing, 198 Minn. 562, 272 N.W. 157 (1936)—§ 23.10
- Malevich v. Hakola, 278 N.W.2d 541 (Minn. 1979)—§§ 20.10, 40.30
- Malik v. Johnson, 300 Minn. 252, 219 N.W.2d 631 (1974)—§ 10.25
- Manion v. Tweedy, 257 Minn. 59, 100 N.W.2d 124 (1959)—§ 80.10
- Mankato, City of v. Hilgers, 313 N.W.2d 610 (Minn. 1981)—§§ Cat. 52, Intro., 52.10, 52.20
- Maplewood, Ramsey County, Village of v. Johnson, 303 Minn. 485, 228 N.W.2d 269 (1975)—§§ Cat. 52, Intro., 52.40
- Marcon v. Kmart Corp., 573 N.W.2d 728 (Minn. Ct. App. 1998)—§§ Cat. 25, Intro., Cat. 75, Intro., 75.10, 75.31, 75.95
- Marier v. Memorial Rescue Service, Inc., 296 Minn. 242, 207 N.W.2d 706 (1973)—§ 28.15

## TABLE OF CASES

- Marker v. Greenberg, 313 N.W.2d 4 (Minn. 1981)—§ Cat. 80, Intro.
- Markmann v. H. A. Bruntjen Co., 249 Minn. 281, 81 N.W.2d 858 (1957)—§§ Cat. 20, Intro., 20.20, 20.25, 20.30
- Maroney v. Minneapolis & St. L. Ry. Co., 123 Minn. 480, 144 N.W. 149 (1913)—§ 91.45
- Marose v. Hennameyer, 347 N.W.2d 509 (Minn. Ct. App. 1984)—§ 65.40
- Marshall v. Galvez, 480 N.W.2d 358 (Minn. Ct. App. 1992)—§§ Cat. 65, Intro., 65.35
- Marso v. Mankato Clinic, Ltd., 278 Minn. 104, 153 N.W.2d 281 (1967)—§ Cat. 20, Intro.
- Marston v. Minneapolis Clinic of Psychiatry and Neurology, Ltd., 329 N.W.2d 306 (Minn. 1982)—§§ Cat. 28, Intro., 30.20
- Martens v. Minnesota Min. & Mfg. Co., 616 N.W.2d 732 (Minn. 2000)—§ 57.10
- Martin v. Hancock, 466 F. Supp. 454 (D. Minn. 1979)—§ 57.40
- Martineau v. Nelson, 311 Minn. 92, 247 N.W.2d 409 (1976)—§ 80.28
- Martinson v. Monticello Municipal Liquors, 297 Minn. 48, 209 N.W.2d 902 (1973)—§ 45.35
- Martz v. Revier, 284 Minn. 166, 170 N.W.2d 83 (1969)—§§ 28.93, 91.75, 91.80
- Maschenik v. Park Nicollet Medical Center, 385 N.W.2d 362 (Minn. Ct. App. 1986)—§ 55.55
- Mason v. Campbell, 27 Minn. 54, 1 Ky. L. Rptr. 301, 6 N.W. 405 (1880)—§ 20.40
- Massolt v. Minnetonka Casino Co., 103 Minn. 517, 114 N.W. 1132 (1908)—§ 48.20
- Mathews v. Mills, 288 Minn. 16, 178 N.W.2d 841 (1970)—§§ 15.15, 15.20, 25.16, 27.15, Cat. 28, Intro., Cat. 90, Intro., 91.40
- Matsuyama v. Birnbaum, 452 Mass. 1, 890 N.E.2d 819 (2008)—§§ Cat. 80, Intro., 80.10
- Mattson v. Minnesota & N.W.R. Co., 98 Minn. 296, 108 N.W. 517 (1906)—§§ Cat. 28, Intro., 28.15
- Mattson v. Minnesota & N. W. R. Co., 95 Minn. 477, 104 N.W. 443 (1905)—§ 28.92
- Mattson v. St. Luke's Hospital of St. Paul, 252 Minn. 230, 89 N.W.2d 743, 71 A.L.R.2d 422 (1958)—§ 85.25
- May v. First Nat. Bank of Grand Forks, North Dakota, 427 N.W.2d 285 (Minn. Ct. App. 1988)—§ 23.10
- Mayes v. Byers, 214 Minn. 54, 7 N.W.2d 403, 144 A.L.R. 821 (1943)—§ 25.45
- Mayzlik v. Lansing Elevator Co., 241 Minn. 468, 63 N.W.2d 380 (1954)—§ 28.25
- McBride v. Sears, Roebuck & Co., 306 Minn. 93, 235 N.W.2d 371 (1975)—§ 50.30
- McCarthy Well Co., Inc. v. St. Peter Creamery, Inc., 410 N.W.2d 312, 4 U.C.C. Rep. Serv. 2d 424 (Minn. 1987)—§§ Cat. 20, Intro., 20.60, Cat. 22, Intro., Cat. 75, Intro.
- McCormack v. Hanksraft Co., 278 Minn. 322, 154 N.W.2d 488 (1967)—§§ 22.10, Cat. 75, Intro., 75.20, 75.35



- McCormick v. Custom Pools, Inc., 376 N.W.2d 471 (Minn. Ct. App. 1985)—§ Cat. 75, Intro.
- McDeid v. O'Keefe, 2003 WL 21525128 (Minn. Ct. App. 2003)—§ 23.10
- McDermott v. Union Credit Co., 76 Minn. 84, 78 N.W. 967—§ 50.20
- McDonald Bros. v. Campbell, 96 Minn. 87, 104 N.W. 760 (1905)—§ 30.50
- McDonald Bros. Co. v. Koltes, 155 Minn. 24, 192 N.W. 109 (1923)—§ 20.40
- McDonough v. City of St. Paul, 179 Minn. 553, 230 N.W. 89 (1930)—§§ Cat. 85, Intro., 85.60
- McElwain v. Van Beek, 447 N.W.2d 442 (Minn. Ct. App. 1989)—§§ Cat. 80, Intro., 80.43
- McGenty v. John A. Stephenson & Co., 218 Minn. 311, 15 N.W.2d 874 (1944)—§ 85.43
- McGowan v. Our Savior's Lutheran Church, 527 N.W.2d 830 (Minn. 1995)—§ 55.33
- McGrath v. TCF Bank Sav., FSB, 502 N.W.2d 801 (Minn. Ct. App. 1993)—§ Cat. 50, Intro.
- McGuire v. J. Neils Lumber Co., 97 Minn. 293, 107 N.W. 130 (1906)—§§ Cat. 20, Intro., 20.45
- McIntosh v. State Farm Mut. Auto. Ins. Co., 488 N.W.2d 476 (Minn. 1992)—§ 59.10
- McIntosh County Bank v. Dorsey & Whitney, LLP, 745 N.W.2d 538 (Minn. 2008)—§ Cat. 80, Intro.
- McKay's Family Dodge v. Hardrives, Inc., 480 N.W.2d 141 (Minn. Ct. App. 1992)—§§ 12.30, Cat. 28, Intro.
- McKee v. Laurion, 825 N.W.2d 725 (Minn. 2013)—§§ Cat. 50, Intro., 50.25
- McKenzie v. Northern States Power Co., 440 N.W.2d 183 (Minn. Ct. App. 1989)—§ Cat. 94, Intro.
- McKenzie v. Wm. J. Burns Intern. Detective Agency, 149 Minn. 311, 183 N.W. 516 (1921)—§§ Cat. 25, Intro., 50.35
- McLaughlin v. Cloquet Tie & Post Co., 119 Minn. 454, 138 N.W. 434 (1912)—§ 30.15
- McLaughlin v. Quinn, 183 Minn. 568, 237 N.W. 598 (1931)—§ Cat. 50, Intro.
- McLeod Nash Motors v. Commercial Credit Trust, 187 Minn. 452, 246 N.W. 17, 87 A.L.R. 296 (1932)—§ 60.93
- McMenomy v. Ryden, 276 Minn. 55, 148 N.W.2d 804, 30 A.L.R.3d 1078 (1967)—§ 23.10
- McShane v. City of Faribault, 292 N.W.2d 253, 18 A.L.R.4th 531 (Minn. 1980)—§§ Cat. 52, Intro., 52.10
- McVeety v. St. Paul, M. & M. R. Co., 45 Minn. 268, 47 N.W. 809 (1891)—§ 48.15
- Meagher v. Kavli, 256 Minn. 54, 97 N.W.2d 370 (1959)—§ Cat. 80, Intro.
- Meany v. Newell, 367 N.W.2d 472, 51 A.L.R.4th 1039 (Minn. 1985)—§ Cat. 45, Intro.
- Mechler v. McMahon, 184 Minn. 476, 239 N.W. 605 (1931)—§ 25.45



## TABLE OF CASES

- Medica, Inc. v. Atlantic Mut. Ins. Co., 566 N.W.2d 74 (Minn. 1997)—  
§ Cat. 59, Intro.
- Medved v. Doolittle, 220 Minn. 352, 19 N.W.2d 788 (1945)—§ 27.20
- Meintsma v. Loram Maintenance of Way, Inc., 684 N.W.2d 434 (Minn. 2004)—§§ 55.32, 55.33
- Meixner v. Bueckslar, 216 Minn. 586, 13 N.W.2d 754 (1944)—§ 85.10
- Melady v. South St. Paul Live Stock Exchange, 142 Minn. 194, 171 N.W. 806 (1919)—§ Cat. 30, Intro.
- Mendota Elec. Co. v. New York Indem. Co., 169 Minn. 377, 211 N.W. 317 (1926)—§ 59.35
- Mercil v. Mathers, 517 N.W.2d 328 (Minn. 1994)—§ 80.31
- Merickel v. Erickson Stores Corp., 255 Minn. 12, 95 N.W.2d 303 (1959)—§§ Cat. 20, Intro., 20.41
- Mesedahl v. St. Luke's Hospital Ass'n of Duluth, 194 Minn. 198, 259 N.W. 819 (1935)—§§ 80.37, 80.40
- Metge v. Central Neighborhood Improvement Ass'n, 649 N.W.2d 488 (Minn. Ct. App. 2002)—§ 40.30
- Metropolitan Sports Facilities Com'n v. General Mills, Inc., 460 N.W.2d 625 (Minn. Ct. App. 1990)—§ 20.79
- Meurer v. Junkermeier, 291 Minn. 318, 191 N.W.2d 416 (1971)—  
§ 27.10
- Meyer v. Illinois Farmers Ins. Group, 371 N.W.2d 535 (Minn. 1985)—  
§ 65.91
- Meyer v. Parkin, 350 N.W.2d 435 (Minn. Ct. App. 1984)—§§ Cat. 85,  
Intro., 85.40, 85.46
- Meyers v. Postal Finance Co., 287 N.W.2d 614 (Minn. 1979)—§§ Cat.  
30, Intro., 30.70
- M.H. v. Caritas Family Services, 488 N.W.2d 282 (Minn. 1992)—§§ Cat.  
57, Intro., 57.20, 59.25
- Micallef v. Miehle Co., Division of Miehle-Goss Dexter, Inc., 39 N.Y.2d 376, 384 N.Y.S.2d 115, 348 N.E.2d 571, 95 A.L.R.3d 1055 (1976)—  
§ 75.20
- Michaelis v. CBS, Inc., 119 F.3d 697 (8th Cir. 1997)—§ 50.25
- Michaelson v. Minnesota Min. & Mfg. Co., 474 N.W.2d 174 (Minn. Ct. App. 1991)—§§ 50.25, 55.65
- Mickelson v. Kernkamp, 230 Minn. 448, 42 N.W.2d 18 (1950)—§§ Cat.  
25, Intro., 27.10
- Midland Nat. Bank of Minneapolis v. Perranoski, 299 N.W.2d 404 (Minn. 1980)—§§ 23.10, Cat. 30, Intro., 30.55
- Midwest Sports Marketing, Inc. v. Hillerich & Bradsby of Canada, Ltd., 552 N.W.2d 254 (Minn. Ct. App. 1996)—§§ 20.56, Cat. 40, Intro.
- Mike's Fixtures, Inc. v. Bombard's Access Floor Systems, Inc., 354 N.W.2d 837 (Minn. Ct. App. 1984)—§ 92.15
- Miklas v. Parrott, 684 N.W.2d 458 (Minn. 2004)—§ 65.92
- Milbank Mut. Ins. Co. v. U.S. Fidelity and Guar. Co., 332 N.W.2d 160 (Minn. 1983)—§§ 32.15, 32.16, 32.20
- Milkovich v. Lorain Journal Co., 497 U.S. 1, 110 S. Ct. 2695, 111 L. Ed. 2d 1, 60 Ed. Law Rep. 1061 (1990)—§ Cat. 50, Intro.
- Miller v. Hughes, 259 Minn. 53, 105 N.W.2d 693 (1960)—§§ Cat. 65,  
Intro., 65.20

- Miller v. Miller, 301 Minn. 207, 222 N.W.2d 71, 77 A.L.R.3d 941 (1974)—§ 23.10
- Miller v. National Broadcasting Co., 187 Cal. App. 3d 1463, 232 Cal. Rptr. 668, 69 A.L.R.4th 1027 (2d Dist. 1986)—§ 72.10
- Miller v. State, 306 N.W.2d 554 (Minn. 1981)—§§ Cat. 70, Intro., 70.15, 70.20
- Miller v. St. Paul City Ry. Co., 66 Minn. 192, 68 N.W. 862 (1896)—§ 48.15
- Miller Waste Mills, Inc. v. Mackay, 520 N.W.2d 490 (Minn. Ct. App. 1994)—§ 23.10
- Minar v. Skoog, 235 Minn. 262, 50 N.W.2d 300 (1951)—§§ Cat. 20, Intro., 20.20, 20.30
- Mingo v. Extrand, 180 Minn. 395, 230 N.W. 895 (1930)—§ Cat. 25, Intro.
- Minke v. City of Minneapolis, 845 N.W.2d 179 (Minn. 2014)—§§ Cat. 50, Intro., 50.30
- Minn. by Burlington Northern R. Co., State of v. Big Stone-Grant Indus. Development and Transp., L.L.C., 990 F. Supp. 731 (D. Minn. 1997)—§ 40.40
- Minneapolis-St. Paul Metropolitan Airports Com'n v. Hedberg-Freidheim Co., 226 Minn. 282, 32 N.W.2d 569 (1948)—§ 52.75
- Minneapolis-St. Paul Sanitary Dist. v. Fitzpatrick, 201 Minn. 442, 277 N.W. 394, 124 A.L.R. 897 (1937)—§§ Cat. 52, Intro., 52.30, 52.35, 52.40
- Minneapolis, City of v. Town of Orono, 212 Minn. 7, 2 N.W.2d 149 (1942)—§ 91.70
- Minneapolis, City of v. Schutt, 256 N.W.2d 260 (Minn. 1977)—§§ Cat. 52, Intro., 52.40
- Minneapolis, City of v. Yale, 269 N.W.2d 754 (Minn. 1978)—§ 52.60
- Minneapolis Cablesystems v. City of Minneapolis, 299 N.W.2d 121 (Minn. 1980)—§§ Cat. 20, Intro., 20.10
- Minneapolis Employees Retirement Fund v. Allison-Williams Co., 519 N.W.2d 176 (Minn. 1994)—§ Cat. 25, Intro.
- Minneapolis Soc. of Fine Arts v. Parker-Klein Associates Architects, Inc., 354 N.W.2d 816 (Minn. 1984)—§§ Cat. 75, Intro., 75.26
- Minnesota-Iowa Television Co. v. Watonwan T.V. Imp. Ass'n, 294 N.W.2d 297 (Minn. 1980)—§ 94.10
- Minnesota Forest Products, Inc. v. Ligna Machinery, Inc., 17 F. Supp. 2d 892, 37 U.C.C. Rep. Serv. 2d 273 (D. Minn. 1998)—§ 22.70
- Minnesota Min. and Mfg. Co. v. Nishika Ltd., 565 N.W.2d 16, 33 U.C.C. Rep. Serv. 2d 58 (Minn. 1997)—§ 15.10
- Minnesota Min. and Mfg. Co. v. Travelers Indem. Co., 457 N.W.2d 175 (Minn. 1990)—§ Cat. 59, Intro.
- Minnesota Timber Producers Associations, Inc. v. American Mut. Ins. Co. of Boston, 766 F.2d 1261 (8th Cir. 1985)—§ 23.10
- Minnwest Bank Central v. Flagship Properties LLC, 689 N.W.2d 295 (Minn. Ct. App. 2004)—§ 20.56
- Mississippi & Rum River Boom Co. v. Patterson, 98 U.S. 403, 25 L. Ed. 206, 1878 WL 18388 (1878)—§§ Cat. 52, Intro., 52.40
- Mitchell v. Mitchell, 54 Minn. 301, 55 N.W. 1134 (1893)—§ 85.10

## TABLE OF CASES

- Mitchell v. Rende, 225 Minn. 145, 30 N.W.2d 27 (1947)—§§ Cat. 20, Intro., 20.41
- Mix v. City of Minneapolis, 219 Minn. 389, 18 N.W.2d 130 (1945)—§ 85.16
- Mix v. MTD Products, Inc., 393 N.W.2d 18 (Minn. Ct. App. 1986)—§ Cat. 75, Intro.
- M.L. v. Magnuson, 531 N.W.2d 849 (Minn. Ct. App. 1995)—§ 55.25
- Mohr v. Williams, 95 Minn. 261, 104 N.W. 12 (1905)—§§ 60.25, Cat. 80, Intro., 80.22
- Molenaar v. United Cattle Co., 553 N.W.2d 424 (Minn. Ct. App. 1996)—§§ Cat. 25, Intro., 60.65, 92.10
- Molkenbur v. Hart, 411 N.W.2d 249 (Minn. Ct. App. 1987)—§ 12.40
- Molloy v. Meier, 679 N.W.2d 711 (Minn. 2004)—§§ Cat. 25, Intro., Cat. 80, Intro., 80.10
- Mooney v. Jones, 238 Minn. 1, 54 N.W.2d 763 (1952)—§ 30.30
- Moore v. Hoff, 821 N.W.2d 591 (Minn. Ct. App. 2012)—§§ 40.30, 40.35
- Moore v. Kujath, 225 Minn. 107, 29 N.W.2d 883, 175 A.L.R. 1007 (1947)—§ 65.30
- Moore v. Palen, 228 Minn. 148, 36 N.W.2d 540, 7 A.L.R.2d 1374 (1949)—§ 91.75
- Moore v. Thorpe, 133 Minn. 244, 158 N.W. 235 (1916)—§ 30.50
- Moosbrugger v. McGraw-Edison Co., 284 Minn. 143, 170 N.W.2d 72 (1969)—§ 22.25
- Moreno v. Crookston Times Printing Co., 610 N.W.2d 321 (Minn. 2000)—§§ 50.30, 50.45
- Morey v. Barnes, 212 Minn. 153, 2 N.W.2d 829 (1942)—§ Cat. 50, Intro.
- Morlock v. St. Paul Guardian Ins. Co., 650 N.W.2d 154 (Minn. 2002)—§ 91.40
- Morrison v. Swenson, 274 Minn. 127, 142 N.W.2d 640 (1966)—§ 59.40
- Mortenson v. Hindahl, 247 Minn. 356, 77 N.W.2d 185 (1956)—§ 70.15
- Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc., 666 N.W.2d 320 (Minn. 2003)—§ Cat. 20, Intro.
- Mounds Park Hospital v. Von Eye, 245 F.2d 756, 70 A.L.R.2d 335 (8th Cir. 1957)—§ 80.37
- Mounds View, City of v. Walijarvi, 263 N.W.2d 420 (Minn. 1978)—§ 80.75
- Mrozka v. Archdiocese of St. Paul and Minneapolis, 482 N.W.2d 806 (Minn. Ct. App. 1992)—§ 60.75
- Muehlhauser v. Erickson, 621 N.W.2d 24 (Minn. Ct. App. 2000)—§ 91.75
- Mueller v. Sigmond, 486 N.W.2d 841 (Minn. Ct. App. 1992)—§ 10.45
- Muggenburg v. Leighton, 241 Minn. 498, 63 N.W.2d 533 (1954)—§ 48.45
- Mulder v. Parke Davis & Co., 288 Minn. 332, 181 N.W.2d 882, 45 A.L.R.3d 920 (1970)—§§ 75.26, 80.16
- Mullan v. Wisconsin Cent. R. Co., 46 Minn. 474, 49 N.W. 249 (1891)—§ 48.30
- Mullen v. Otter Tail Power Co., 130 Minn. 386, 153 N.W. 746 (1915)—§ 92.15



- Muller v. McKesson, 73 N.Y. 195, 1878 WL 12552 (1878)—§ 38.20  
 Murphy v. Country House, Inc., 307 Minn. 344, 240 N.W.2d 507 (1976)—§ 23.10  
 Murphy v. Hennen, 264 Minn. 457, 119 N.W.2d 489 (1963)—§§ Cat. 45, Intro., 45.30  
 Murray v. Puls, 690 N.W.2d 337 (Minn. Ct. App. 2004)—§ Cat. 20, Intro.  
 Murray v. Walter, 269 N.W.2d 47 (Minn. 1978)—§ 65.40  
 Myers v. Winslow R. Chamberlain Co., 443 N.W.2d 211 (Minn. Ct. App. 1989)—§ 85.25

N

- Nadeau v. Maryland Cas. Co., 170 Minn. 326, 212 N.W. 595 (1927)—§ 20.75  
 Nathe Bros., Inc. v. American Nat. Fire Ins. Co., 615 N.W.2d 341 (Minn. 2000)—§ Cat. 59, Intro.  
 National Farmers Union Property & Cas. Co. v. Fuel Recovery Co., Inc., 432 N.W.2d 788 (Minn. Ct. App. 1988)—§ 20.80  
 National Recruiters, Inc. v. Cashman, 323 N.W.2d 736 (Minn. 1982)—§§ Cat. 20, Intro., 20.40  
 National Recruiters, Inc. v. Toro Co., 343 N.W.2d 704 (Minn. Ct. App. 1984)—§ 20.79  
 Navarre v. South Washington County Schools, 652 N.W.2d 9, 170 Ed. Law Rep. 369 (Minn. 2002)—§ 60.75  
 Nave v. Dovolos, 395 N.W.2d 393 (Minn. Ct. App. 1986)—§§ 57.10, 57.25  
 Navickas v. Quilling, 2010 WL 5290552 (Minn. Ct. App. 2010)—§ 85.82  
 Neal v. Neal, 238 Minn. 292, 56 N.W.2d 673 (1953)—§ 25.12  
 Nees v. Minneapolis St. Ry. Co., 218 Minn. 532, 16 N.W.2d 758 (1944)—§ 25.45  
 Nelson v. American Family Ins. Group, 651 N.W.2d 499 (Minn. 2002)—§ 20.81  
 Nelson v. Nelson, 282 Minn. 487, 166 N.W.2d 70 (1969)—§ 30.15  
 Nelson v. Productive Alternatives, Inc., 715 N.W.2d 452 (Minn. 2006)—§ 55.65  
 Nelson v. Seaboard Sur. Co., 269 F.2d 882 (8th Cir. 1959)—§ 30.50  
 Nelson v. Swedish Hosp., 241 Minn. 551, 64 N.W.2d 38 (1954)—§ 80.37  
 Nelson v. Twin City Motor Bus Co., 239 Minn. 276, 58 N.W.2d 561 (1953)—§ 91.40  
 Nelson v. Wilkins Dodge, Inc., 256 N.W.2d 472, 21 U.C.C. Rep. Serv. 1001 (Minn. 1977)—§ 22.65  
 Nemanic v. Gopher Heating and Sheet Metal, Inc., 337 N.W.2d 667 (Minn. 1983)—§ 65.40  
 Newcomb v. Meiss, 263 Minn. 315, 116 N.W.2d 593 (1962)—§ 32.15  
 New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686, 95 A.L.R.2d 1412 (1964)—§§ Cat. 25, Intro., Cat. 50, Intro., 50.35, 50.40, 50.93, 50.94, 50.95, 50.96  
 Niccum v. Hydra Tool Corp., 438 N.W.2d 96 (Minn. 1989)—§ 75.25  
 Nicholas v. Minnesota Milk Co., 212 Minn. 333, 4 N.W.2d 84 (1942)—§ 25.16



## TABLE OF CASES

- Nichols v. Village of Buhl, 152 Minn. 494, 193 N.W. 28 (1922)—§ Cat. 85, Intro.
- Nickelson v. Mall of America Co., 593 N.W.2d 723 (Minn. Ct. App. 1999)—§ Cat. 85, Intro.
- Niemann v. Northwestern College, 389 N.W.2d 260 (Minn. Ct. App. 1986)—§ 85.25
- Nischke v. Farmers & Merchants Bank & Trust, 187 Wis. 2d 96, 522 N.W.2d 542 (Ct. App. 1994)—§ 28.92
- Nixon v. Dispatch Printing Co., 101 Minn. 309, 112 N.W. 258 (1907)—§ 50.30
- N.K.K. by Knudson v. St. Paul Fire & Marine Ins. Co., 555 N.W.2d 21 (Minn. Ct. App. 1996)—§ 59.15
- Nodland v. Chirpich, 307 Minn. 360, 240 N.W.2d 513 (1976)—§§ Cat. 20, Intro., 20.30, 20.56
- Noe v. Great Northern Ry. Co., 168 Minn. 259, 209 N.W. 905 (1926)—§ 91.75
- Nommensen v. American Continental Ins. Co., 2001 WI 112, 246 Wis. 2d 132, 629 N.W.2d 301 (2001)—§ 28.92
- NorAm Inv. Services, Inc. v. Stirtz Bernards Boyden Surdel & Larter, P.A., 611 N.W.2d 372 (Minn. Ct. App. 2000)—§§ 57.20, 80.75
- Norberg v. Northwestern Hospital Ass'n, Inc., 270 N.W.2d 271 (Minn. 1978)—§ 27.10
- Nordling v. Northern States Power Co., 478 N.W.2d 498 (Minn. 1991)—§ 40.30
- Nordorf, In re Estate of, 364 N.W.2d 877 (Minn. Ct. App. 1985)—§ 23.10
- Norfolk & W. Ry. Co. v. Liepelt, 444 U.S. 490, 100 S. Ct. 755, 62 L. Ed. 2d 689, 10 Fed. R. Evid. Serv. 130 (1980)—§ 90.30
- Norris v. Cohen, 223 Minn. 471, 27 N.W.2d 277, 171 A.L.R. 178 (1947)—§ 20.76
- Northernair Productions, Inc. v. Crow Wing County, 309 Minn. 386, 244 N.W.2d 279 (1976)—§ 57.10
- Northern Petrochemical Co. v. Thorsen & Thorshov, Inc., 297 Minn. 118, 211 N.W.2d 159 (1973)—§ 92.10
- Northern States Power Co. v. Fidelity and Cas. Co. of New York, 523 N.W.2d 657 (Minn. 1994)—§ 59.10
- Northfield Nat. Bank v. Associated Milk Producers, Inc., 390 N.W.2d 289 (Minn. Ct. App. 1986)—§ 94.10
- North Star Center, Inc. v. Sibley Bowl, Inc., 295 Minn. 424, 205 N.W.2d 331 (1973)—§§ 20.75, 20.76
- Northwest Airlines, Inc. v. Friday, 617 N.W.2d 590 (Minn. Ct. App. 2000)—§ 40.15
- Northwest Airlines, Inc. v. Globe Indem. Co., 303 Minn. 16, 225 N.W.2d 831 (1975)—§ Cat. 59, Intro.
- Norwest Bank Hastings v. Clapp, 394 N.W.2d 176 (Minn. Ct. App. 1986)—§ 23.10
- Norwest Bank Minnesota North, N.A. v. Beckler, 663 N.W.2d 571 (Minn. Ct. App. 2003)—§§ Cat. 20, Intro., 23.10
- Noske v. Friedberg, 670 N.W.2d 740 (Minn. 2003)—§ Cat. 80, Intro.

Noske v. Friedberg, 656 N.W.2d 409 (Minn. Ct. App. 2003)—§ 14.15  
 Novotny v. Bouley, 223 Minn. 592, 27 N.W.2d 813 (1947)—§ 55.31  
 Nubbe v. Hardy Continental Hotel System of Minn., 225 Minn. 496, 31  
 N.W.2d 332 (1948)—§§ Cat. 85, Intro., 85.43

O

Oakland v. Stenlund, 420 N.W.2d 248 (Minn. Ct. App. 1988)—§§ Cat.  
 25, Intro., 85.49  
 Oaks Gallery and Country Store-Winona, Inc. v. Lee Enterprises, Inc.,  
 613 N.W.2d 800 (Minn. Ct. App. 2000)—§§ Cat. 50, Intro., 50.15  
 Obst v. Microtron, Inc., 614 N.W.2d 196 (Minn. 2000)—§§ 55.65, 55.66  
 O'Connor v. Schwartz, 304 Minn. 155, 229 N.W.2d 511 (1975)—§ 92.10  
 Odegard v. Finne, 500 N.W.2d 140 (Minn. Ct. App. 1993)—§ 60.75  
 Odenthal v. Minnesota Conference of Seventh-Day Adventists, 657  
 N.W.2d 569 (Minn. Ct. App. 2003)—§§ 55.25, 55.30  
 Odenthal v. Minnesota Conference of Seventh-Day Adventists, 649  
 N.W.2d 426 (Minn. 2002)—§§ 55.20, 55.25, 55.30, Cat. 80, Intro.  
 Oelke v. Faribault County, 260 Minn. 361, 110 N.W.2d 145 (1961)—  
 § 52.80  
 Oelke v. Faribault County, 244 Minn. 543, 70 N.W.2d 853 (1955)—  
 § 52.80  
 Okrina v. Midwestern Corp., 282 Minn. 400, 165 N.W.2d 259 (1969)—  
 §§ Cat. 25, Intro., 25.50, 25.52, 91.10  
 O'Laughlin v. Minnesota Natural Gas Co., 253 N.W.2d 826, 21 U.C.C.  
 Rep. Serv. 1258 (Minn. 1977)—§§ 22.25, Cat. 75, Intro., 75.10,  
 75.31  
 Olberg v. Minneapolis Gas Co., 291 Minn. 334, 191 N.W.2d 418  
 (1971)—§ 10.40  
 Oldendorf v. Eide, 260 Minn. 458, 110 N.W.2d 310 (1961)—§ 65.35  
 Olin v. Minnesota Transfer Ry. Co., 164 Minn. 512, 205 N.W. 440  
 (1925)—§ 48.45  
 Olsen v. Special School Dist. No. 1, 427 N.W.2d 707, 48 Ed. Law Rep.  
 952 (Minn. Ct. App. 1988)—§ 90.25  
 Olson v. Anderson, 224 Minn. 216, 28 N.W.2d 66 (1947)—§ 25.12  
 Olson v. Aretz, 346 N.W.2d 178 (Minn. Ct. App. 1984)—§ Cat. 20, Intro.  
 Olson v. Village of Babbitt, 291 Minn. 105, 189 N.W.2d 701, 9 U.C.C.  
 Rep. Serv. 1041 (1971)—§§ Cat. 75, Intro., 75.20  
 Olson v. Duluth, M. & I. R. Ry. Co., 213 Minn. 106, 5 N.W.2d 492  
 (1942)—§§ 25.10, 65.25  
 Olson v. First Church of Nazarene, 661 N.W.2d 254 (Minn. Ct. App.  
 2003)—§§ 55.25, 55.30  
 Olson v. Ford Motor Co., 558 N.W.2d 491 (Minn. 1997)—§ 75.20  
 Olson v. Hansen, 299 Minn. 39, 216 N.W.2d 124 (1974)—§§ Cat. 28,  
 Intro., 28.30  
 Olson v. Hartwig, 288 Minn. 375, 180 N.W.2d 870 (1970)—§§ 28.93,  
 91.80  
 Olson v. Ische, 343 N.W.2d 284 (Minn. 1984)—§§ 30.65, 65.20  
 Olson v. Penkert, 252 Minn. 334, 90 N.W.2d 193 (1958)—§§ Cat. 20,  
 Intro., 20.41

## TABLE OF CASES

- Olson v. Rugloski, 277 N.W.2d 385 (Minn. 1979)—§§ Cat. 20, Intro., 20.60
- Olson v. City of St. James, 380 N.W.2d 555 (Minn. Ct. App. 1986)—§§ Cat. 85, Intro., 85.60
- Olson v. St. Joseph's Hospital, 281 N.W.2d 704 (Minn. 1979)—§ 25.50
- Olson v. Synergistic Technologies Business Systems, Inc., 628 N.W.2d 142 (Minn. 2001)—§ 20.50
- Olson v. United States, 292 U.S. 246, 54 S. Ct. 704, 78 L. Ed. 1236 (1934)—§§ Cat. 52, Intro., 52.35, 52.40
- Olson, Clough & Straumann, CPA's v. Trayne Properties, Inc., 392 N.W.2d 2 (Minn. Ct. App. 1986)—§§ Cat. 80, Intro., 80.75
- Olstad v. Fahse, 204 Minn. 118, 282 N.W. 694 (1938)—§ 25.14
- Omnetics, Inc. v. Radiant Technology Corp., 440 N.W.2d 177 (Minn. Ct. App. 1989)—§ 75.20
- Opay v. Howard Lake Liquor Store, 1995 WL 34838 (Minn. Ct. App. 1995)—§ 45.60
- Orwick v. Belshan, 304 Minn. 338, 231 N.W.2d 90 (1975)—§§ 25.50, 25.55, 27.10
- Osborne v. McMasters, 40 Minn. 103, 41 N.W. 543 (1889)—§ Cat. 25, Intro.
- Osborne v. Twin Town Bowl, Inc., 749 N.W.2d 367 (Minn. 2008)—§§ Cat. 25, Intro., 45.30
- Oslin v. State, 543 N.W.2d 408 (Minn. Ct. App. 1996)—§§ 30.91, 30.92
- Ossenfort v. Associated Milk Producers, Inc., 254 N.W.2d 672 (Minn. 1977)—§§ 10.45, Cat. 30, Intro., 30.10, 90.25
- Oswalt v. Ramsey County, 371 N.W.2d 241 (Minn. Ct. App. 1985)—§ 60.75
- Otis v. Anoka-Hennepin School Dist. No. 11, 611 N.W.2d 390, 144 Ed. Law Rep. 748 (Minn. Ct. App. 2000)—§§ Cat. 85, Intro., 85.63
- Otos v. Great Northern Ry. Co., 128 Minn. 283, 150 N.W. 922 (1915)—§ 91.45
- Otto v. City of St. Paul, 460 N.W.2d 359 (Minn. Ct. App. 1990)—§ 85.25
- Ouellette by Ouellette v. Subak, 391 N.W.2d 810 (Minn. 1986)—§§ Cat. 80, Intro., 80.10, 80.75

## P

- Pacific Indem. Co. v. Thompson-Yaeger, Inc., 260 N.W.2d 548 (Minn. 1977)—§§ 15.35, Cat. 25, Intro., 25.45
- Pacific Indem. Co. v. Thompson-Yaeger, Inc., 258 N.W.2d 762 (Minn. 1977)—§ 92.10
- Padco, Inc. v. Kinney & Lange, 444 N.W.2d 889 (Minn. Ct. App. 1989)—§ 23.10
- Paidar v. Hughes, 615 N.W.2d 276 (Minn. 2000)—§ 85.82
- Paine v. Sherwood, 21 Minn. 225, 1875 WL 3766 (1875)—§§ Cat. 20, Intro., 20.60
- Paine v. Water Works Supply Co., 269 N.W.2d 725 (Minn. 1978)—§§ Cat. 45, Intro., 45.45
- Palsgraf v. Long Island R. Co., 248 N.Y. 339, 162 N.E. 99 (1928)—§§ Cat. 80, Intro., 80.10



- Paradise v. City of Minneapolis, 297 N.W.2d 152 (Minn. 1980)—§ 60.25
- Park Nicollet Clinic v. Hamann, 808 N.W.2d 828 (Minn. 2011)—§ 20.45
- Parks v. Allis-Chalmers Corp., 289 N.W.2d 456 (Minn. 1979)—§§ 75.20, 75.35
- Parkside Mobile Estates v. Lee, 270 N.W.2d 758 (Minn. 1978)—§ 10.25
- Patmont v. International Christian Missionary Ass'n, 142 Minn. 147, 171 N.W. 302 (1919)—§ 50.30
- Patterson v. Blatti, 133 Minn. 23, 157 N.W. 717 (1916)—§ 91.45
- Patton v. Minneapolis St. Ry. Co., 247 Minn. 368, 77 N.W.2d 433, 58 A.L.R.2d 921 (1956)—§ 48.15
- Paulos v. Johnson, 597 N.W.2d 316 (Minn. Ct. App. 1999)—§ 80.10
- Paulson v. Lapa, Inc., 450 N.W.2d 374 (Minn. Ct. App. 1990)—§ Cat. 45, Intro.
- Pearson v. Northland Transp. Co., 184 Minn. 560, 239 N.W. 602 (1931)—§ 10.25
- Pedro v. Pedro, 489 N.W.2d 798 (Minn. Ct. App. 1992)—§ 23.10
- Pelzer v. Lange, 254 Minn. 46, 93 N.W.2d 666 (1958)—§ 70.15
- Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978)—§§ Cat. 52, Intro., 52.15
- People Pleasing of Minnesota, Inc. v. State, by Humphrey, 1994 WL 62145 (Minn. Ct. App. 1994)—§§ Cat. 52, Intro., 52.40
- Perry, In re Disciplinary Action Against, 494 N.W.2d 290 (Minn. 1992)—§§ Cat. 80, Intro., 80.61
- Peters v. Bodin, 242 Minn. 489, 65 N.W.2d 917 (1954)—§ 28.92
- Peters v. Mutual Ben. Life Ins. Co., 420 N.W.2d 908 (Minn. Ct. App. 1988)—§§ Cat. 20, Intro., 20.60
- Peterson v. American Family Mut. Ins. Co., 280 Minn. 482, 160 N.W.2d 541 (1968)—§ 59.35
- Peterson v. Balach, 294 Minn. 161, 199 N.W.2d 639 (1972)—§§ Cat. 85, Intro., 85.10, 85.13, 85.19, 85.22, 85.25
- Peterson v. Bendix Home Systems, Inc., 318 N.W.2d 50, 33 U.C.C. Rep. Serv. 876 (Minn. 1982)—§§ 22.65, 22.70, Cat. 25, Intro., Cat. 28, Intro., 28.15
- Peterson v. Branton, 137 Minn. 74, 162 N.W. 895 (1917)—§ 80.28
- Peterson v. Fulton, 192 Minn. 360, 256 N.W. 901 (1934)—§§ Cat. 25, Intro., 27.10
- Peterson v. Lang, 239 Minn. 319, 58 N.W.2d 609 (1953)—§ 65.30
- Peterson v. Little-Giant Glencoe Portable Elevator Div. of Dynamics Corp. of America, 366 N.W.2d 111 (Minn. 1985)—§ 15.35
- Peterson v. Lutz, 212 Minn. 307, 3 N.W.2d 489 (1942)—§ 60.70
- Peterson v. Minneapolis Star & Tribune Co., 282 Minn. 264, 164 N.W.2d 621 (1969)—§ 15.10
- Peterson v. Minneapolis St. Ry. Co., 226 Minn. 27, 31 N.W.2d 905 (1948)—§§ 65.10, 65.25
- Peterson v. Minnesota Power & Light Co., 207 Minn. 387, 291 N.W. 705 (1940)—§ 25.50
- Peterson v. Minnesota Power & Light Co., 206 Minn. 268, 288 N.W. 588 (1939)—§ 25.10
- Peterson v. Richfield Plaza, Inc., 252 Minn. 215, 89 N.W.2d 712 (1958)—§§ Cat. 28, Intro., 28.15, 85.19



## TABLE OF CASES

- Peterson v. Sorlien, 299 N.W.2d 123, 11 A.L.R.4th 208 (Minn. 1980)—  
§§ 60.15, 60.70
- Peterson v. Steenerson, 113 Minn. 87, 129 N.W. 147 (1910)—§ 50.30
- Petsch v. St. Paul Dispatch Printing Co., 40 Minn. 291, 41 N.W. 1034  
(1889)—§ 50.15
- Phelps v. Commonwealth Land Title Ins. Co., 537 N.W.2d 271 (Minn.  
1995)—§§ Cat. 90, Intro., 90.10
- Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 106 S. Ct. 1558,  
89 L. Ed. 2d 783 (1986)—§ 50.25
- Philip Morris USA v. Williams, 549 U.S. 346, 127 S. Ct. 1057, 166 L.  
Ed. 2d 940 (2007)—§ 94.10
- Phillips v. Grendahl, 312 F.3d 357 (8th Cir. 2002)—§ 72.10
- Phipps v. Clark Oil & Refining Corp., 408 N.W.2d 569 (Minn. 1987)—  
§§ Cat. 50, Intro., 50.35, 50.90, 50.94, 50.96, 55.65
- Pierson v. Edstrom, 286 Minn. 164, 174 N.W.2d 712 (1970)—§ 30.65
- Pietila v. Congdon, 362 N.W.2d 328 (Minn. 1985)—§ 85.25
- Pietrzak v. Eggen, 295 N.W.2d 504 (Minn. 1980)—§§ Cat. 90, Intro.,  
90.10, 90.15, 91.25, 91.30
- Pine River State Bank v. Mettille, 333 N.W.2d 622 (Minn. 1983)—  
§§ Cat. 20, Intro., 20.15, 55.35, 55.40, 55.45, 55.50, 55.60
- Piotrowski v. Bretz, 1998 WL 613857 (Minn. Ct. App. 1998)—§ 85.80
- Piotrowski v. Southworth Products Corp., 15 F.3d 748, 22 U.C.C. Rep.  
Serv. 2d 723 (8th Cir. 1994)—§§ Cat. 22, Intro., Cat. 75, Intro.,  
75.20
- PJ Acquisition Corp. v. Skoglund, 453 N.W.2d 1 (Minn. 1990)—§ 23.10
- P.L. v. Aubert, 545 N.W.2d 666, 108 Ed. Law Rep. 887, 86 A.L.R.5th  
719 (Minn. 1996)—§ 30.20
- Plath v. Plath, 402 N.W.2d 577 (Minn. Ct. App. 1987)—§§ Cat. 25,  
Intro., 60.10
- Pletan v. Gaines, 494 N.W.2d 38, 80 Ed. Law Rep. 187 (Minn. 1992)—  
§ 25.40
- Plotkin v. Northland Transp. Co., 204 Minn. 422, 283 N.W. 758  
(1939)—§ 30.15
- Pluntz v. Farmington Ford-Mercury, Inc., 470 N.W.2d 709 (Minn. Ct.  
App. 1991)—§ 60.42
- Plutshack v. University of Minnesota Hospitals, 316 N.W.2d 1 (Minn.  
1982)—§§ Cat. 80, Intro., 80.25, 80.31
- PMH Properties v. Nichols, 263 N.W.2d 799 (Minn. 1978)—§§ 23.10,  
30.25
- Podany v. Erickson, 235 Minn. 36, 49 N.W.2d 193 (1951)—§§ Cat. 20,  
Intro., 20.20, 20.25, 20.30
- Pogalz v. Kenna, 267 Minn. 340, 126 N.W.2d 458 (1964)—§ 25.10
- Polaris Industries v. Plastics, Inc., 299 N.W.2d 414 (Minn. 1980)—  
§§ 75.95, 75.96, 92.10
- Pollock-Halvarson v. McGuire, 576 N.W.2d 451 (Minn. Ct. App. 1998)—  
§ Cat. 80, Intro.
- Pond Hollow Homeowners Ass'n v. The Ryland Group, Inc., 779 N.W.2d  
920 (Minn. Ct. App. 2010)—§ 80.75
- Ponticas v. K.M.S. Investments, 331 N.W.2d 907, 38 A.L.R.4th 225

- (Minn. 1983)—§§ 27.20, Cat. 30, Intro., 30.15, 30.91, 30.92, 55.20, 55.30
- Poppenhagen v. Sornsin Const. Co., 300 Minn. 73, 220 N.W.2d 281 (1974)—§ 10.20
- Popple by Popple v. Rose, 254 Neb. 1, 573 N.W.2d 765 (1998)—§ 70.25
- Porter v. Grennan Bakeries, 219 Minn. 14, 16 N.W.2d 906 (1944)—§§ 30.15, 30.90, 30.91, 55.30
- Portlance v. Golden Valley State Bank, 405 N.W.2d 240 (Minn. 1987)—§ 55.60
- Potter v. Hartzell Propeller, Inc., 291 Minn. 513, 189 N.W.2d 499 (1971)—§ 92.10
- Potter v. LaSalle Court Sports & Health Club, 384 N.W.2d 873 (Minn. 1986)—§ 94.10
- Potter v. Pohlad, 560 N.W.2d 389 (Minn. Ct. App. 1997)—§ 23.10
- Potthoff v. Jefferson Lines, Inc., 363 N.W.2d 771 (Minn. Ct. App. 1985)—§ 40.45
- Powell v. MVE Holdings, Inc., 626 N.W.2d 451 (Minn. Ct. App. 2001)—§ Cat. 20, Intro.
- Powers v. Siats, 244 Minn. 515, 70 N.W.2d 344 (1955)—§ 20.80
- Poynter v. Otter Tail County, 223 Minn. 121, 25 N.W.2d 708 (1947)—§ 92.10
- Pratt v. State, Dept. of Natural Resources, 309 N.W.2d 767 (Minn. 1981)—§§ Cat. 52, Intro., 52.10
- Pratt by Pratt v. University of Minnesota Affiliated Hospitals and Clinics, 414 N.W.2d 399, 42 Ed. Law Rep. 938 (Minn. 1987)—§ 80.25
- Price v. Shell Oil Co., 2 Cal. 3d 245, 85 Cal. Rptr. 178, 466 P.2d 722 (1970)—§ 75.45
- Prichard Bros., Inc. v. Grady Co., 428 N.W.2d 391, 48 Ed. Law Rep. 990 (Minn. 1988)—§§ Cat. 20, Intro., 20.60
- Priddy v. Edelman, 883 F.2d 438 (6th Cir. 1989)—§ 23.10
- Prokop v. Independent School Dist. No. 625, 754 N.W.2d 709, 235 Ed. Law Rep. 635 (Minn. Ct. App. 2008)—§ 85.31
- Purcell v. St. Paul City Ry. Co., 48 Minn. 134, 50 N.W. 1034 (1892)—§ 27.20

## Q

- Quevli Farms of Lakefield v. Union Sav. Bank & Trust Co. of Davenport, Iowa, 178 Minn. 27, 226 N.W. 191 (1929)—§ 85.82
- Quick v. Benedictine Sisters Hospital Ass'n, 257 Minn. 470, 102 N.W.2d 36 (1960)—§§ 25.10, 80.37
- Quigley v. Village of Hibbing, 268 Minn. 541, 129 N.W.2d 765, 20 A.L.R.3d 1353 (1964)—§ Cat. 25, Intro.
- Quill v. Trans World Airlines, Inc., 361 N.W.2d 438 (Minn. Ct. App. 1985)—§ 15.35

## R

- Radel v. Bloom Lake Farms, 553 N.W.2d 109 (Minn. Ct. App. 1996)—§ 28.91
- Radermacher v. St. Paul City Ry. Co., 214 Minn. 427, 8 N.W.2d 466, 145 A.L.R. 1027 (1943)—§ 48.15

## TABLE OF CASES

- Radium Remedies Co. v. Weiss, 173 Minn. 342, 217 N.W. 339 (1928)—  
§ Cat. 40, Intro.
- Radke v. Kolbe, 79 Minn. 440, 82 N.W. 977 (1900)—§ 50.20
- Rambaum v. Swisher, 435 N.W.2d 19 (Minn. 1989)—§ 45.10
- Ramirez v. Miska, 304 Minn. 4, 228 N.W.2d 871 (1975)—§ 27.10
- RAM Mut. Ins. Co. v. Meyer, 768 N.W.2d 399 (Minn. Ct. App. 2009)—  
§ 59.30
- Rampi v. Vevea, 229 Minn. 11, 38 N.W.2d 297 (1949)—§ 30.15
- Ramsey v. Glenney, 45 Minn. 401, 48 N.W. 322 (1891)—§ 85.80
- Ramsey County v. Miller, 316 N.W.2d 917 (Minn. 1982)—§§ Cat. 52,  
Intro., 52.40
- Ramstad v. Lear Siegler Diversified Holdings Corp., 836 F. Supp. 1511  
(D. Minn. 1993)—§ 75.40
- Ramswick v. Messerer, 200 Minn. 299, 274 N.W. 179 (1937)—§ 15.10
- Randall v. Village of Excelsior, 258 Minn. 81, 103 N.W.2d 131 (1960)—  
§§ Cat. 45, Intro., 60.80
- Rapp, In re, 621 N.W.2d 781 (Minn. Ct. App. 2001)—§ Cat. 52, Intro.
- Rasivong v. Lakewood Community College, 504 N.W.2d 778, 85 Ed.  
Law Rep. 270 (Minn. Ct. App. 1993)—§ 85.25
- Rask v. Norman, 141 Minn. 198, 169 N.W. 704, 17 A.L.R. 1296  
(1918)—§ 20.40
- Rasmussen v. Prudential Ins. Co., 277 Minn. 266, 152 N.W.2d 359  
(1967)—§ Cat. 25, Intro.
- Ray v. Miller Meester Advertising, Inc., 684 N.W.2d 404 (Minn.  
2004)—§§ Cat. 90, Intro., 90.10
- Rebehn v. General Motors Corp., 1995 WL 146662 (Minn. Ct. App.  
1995)—§ 75.20
- Reber v. Hanson, 260 Wis. 632, 51 N.W.2d 505 (1952)—§ 28.92
- Recke v. State, 298 Minn. 500, 215 N.W.2d 786 (1974)—§ 52.40
- Rector, Wardens and Vestry of St. Christopher's Episcopal Church v. C.  
S. McCrossan, Inc., 306 Minn. 143, 235 N.W.2d 609 (1975)—§ 92.10
- Rediske v. Minnesota Valley Breeder's Ass'n, 374 N.W.2d 745 (Minn.  
Ct. App. 1985)—§§ 15.35, Cat. 75, Intro., 75.95
- Reed v. Board of Park Com'rs of City of Winona, 100 Minn. 167, 110  
N.W. 1119 (1907)—§ 60.86
- Reed v. Great Northern R. Co., 76 Minn. 163, 78 N.W. 974 (1899)—  
§§ Cat. 48, Intro., 48.40
- Regan v. Stromberg, 285 N.W.2d 97 (Minn. 1979)—§ 27.20
- Regents of the University of Minnesota v. Chief Industries, Inc., 106  
F.3d 1409, 116 Ed. Law Rep. 108, 31 U.C.C. Rep. Serv. 2d 977 (8th  
Cir. 1997)—§ Cat. 75, Intro.
- Rehabilitation Specialists, Inc. v. Koering, 404 N.W.2d 301 (Minn. Ct.  
App. 1987)—§ Cat. 40, Intro.
- Rehnberg v. Minnesota Homes, 236 Minn. 230, 52 N.W.2d 454 (1952)—  
§§ Cat. 30, Intro., 30.70
- Reid v. Minneapolis St. Ry. Co., 171 Minn. 31, 213 N.W. 43 (1927)—  
§ 48.15
- Reider v. City of Spring Lake Park, 480 N.W.2d 662 (Minn. Ct. App.  
1992)—§§ 85.10, 85.22



- Reinhardt v. Colton, 337 N.W.2d 88 (Minn. 1983)—§§ 80.16, 80.25
- Reiter v. Dyken, 95 Wis. 2d 461, 290 N.W.2d 510 (1980)—§ 28.15
- Reliance Ins. Co. v. St. Paul Ins. Companies, 307 Minn. 338, 239 N.W.2d 922, 84 A.L.R.3d 181 (1976)—§ 59.15
- Renswick v. Wenzel, 819 N.W.2d 198 (Minn. Ct. App. 2012)—§§ Cat. 28, Intro., 28.30, 85.25, Cat. 90, Intro.
- Republic Vanguard Ins. Co. v. Buehl, 295 Minn. 327, 204 N.W.2d 426 (1973)—§§ Cat. 70, Intro., 70.25
- R.E.R. v. J.G., 552 N.W.2d 27 (Minn. Ct. App. 1996)—§ 60.75
- Rice v. Forby, 304 Minn. 23, 228 N.W.2d 581 (1975)—§ 85.52
- Richards v. Milwaukee Ins. Co., 518 N.W.2d 26 (Minn. 1994)—§ 65.91
- Richfield Bank & Trust Co. v. Sjogren, 309 Minn. 362, 244 N.W.2d 648 (1976)—§§ 57.10, 57.30
- Richie v. Elmquist, 283 Minn. 375, 168 N.W.2d 332 (1969)—§ 25.10
- Richie v. Paramount Pictures Corp., 544 N.W.2d 21 (Minn. 1996)—§§ Cat. 50, Intro., 50.50, 50.55, 50.95, 50.96, Cat. 72, Intro.
- Rico v. State, 472 N.W.2d 100 (Minn. 1991)—§ Cat. 25, Intro.
- Rieger v. Zackoski, 321 N.W.2d 16 (Minn. 1982)—§§ 27.20, Cat. 28, Intro., 28.30, 85.10, 85.22
- Rients v. International Harvester Co., 346 N.W.2d 359 (Minn. Ct. App. 1984)—§ Cat. 75, Intro.
- Riley v. Lake, 295 Minn. 43, 203 N.W.2d 331 (1972)—§§ Cat. 65, Intro., 65.25
- Riley v. Luedloff, 253 Minn. 447, 92 N.W.2d 806 (1958)—§ 91.35
- Riley Bros. Constr., Inc. v. Shuck, 704 N.W.2d 197 (Minn. Ct. App. 2005)—§ Cat. 20, Intro.
- Rinkel v. Lee's Plumbing & Heating Co., 257 Minn. 14, 99 N.W.2d 779 (1959)—§ 92.10
- Ripka v. Mehus, 390 N.W.2d 878 (Minn. Ct. App. 1986)—§§ 15.40, 28.91
- Risberg v. Duluth, M. & I. R. Ry. Co., 233 Minn. 396, 47 N.W.2d 113 (1951)—§ 25.50
- Riviera Imports, Inc. v. Anderson Used Cars, Inc., 268 Minn. 202, 128 N.W.2d 159 (1964)—§ 22.25
- Roadman v. C.E. Johnson Motor Sales, 210 Minn. 59, 297 N.W. 166 (1941)—§ 85.13
- Robert C. Ozer, P.C. v. Borquez, 940 P.2d 371 (Colo. 1997)—§ Cat. 72, Intro.
- Robins v. Conseco Finance Loan Co., 656 N.W.2d 241 (Minn. Ct. App. 2003)—§ 72.20
- Rochester City Lines, Co. v. City of Rochester, 846 N.W.2d 444 (Minn. Ct. App. 2014)—§ Cat. 50, Intro.
- Rockwood v. Lansburgh, 109 Cal. App. 581, 293 P. 792 (1st Dist. 1930)—§ 91.65
- Rodgers v. Kemper Constr. Co., 50 Cal. App. 3d 608, 124 Cal. Rptr. 143 (4th Dist. 1975)—§ 30.20
- Roemer v. Martin, 440 N.W.2d 122 (Minn. 1989)—§ 27.15
- Roers v. Engebretson, 479 N.W.2d 422 (Minn. Ct. App. 1992)—§ 80.28
- Roettger v. United Hospitals of St. Paul, Inc., 380 N.W.2d 856 (Minn. Ct. App. 1986)—§ 80.37

## TABLE OF CASES

- Rohrbaugh v. Wal-Mart Stores, Inc., 212 W. Va. 358, 572 S.E.2d 881 (2002)—§ 72.25
- Rolfe v. Noyes Bros. & Cutler, 157 Minn. 443, 196 N.W. 481 (1923)—§ 50.30
- Romanik v. Toro Co., 277 N.W.2d 515, 2 A.L.R.4th 1276 (Minn. 1979)—§§ Cat. 70, Intro., 70.15
- Romans v. Nadler, 217 Minn. 174, 14 N.W.2d 482 (1944)—§ 85.80
- Rome v. Rome, 307 Minn. 207, 239 N.W.2d 232 (1976)—§ 25.12
- Rooney v. Dayton-Hudson Corp., 310 Minn. 256, 246 N.W.2d 170 (1976)—§ 55.35
- Roraback v. Motion Picture Mach. Operators' Union of Minneapolis, 140 Minn. 481, 168 N.W. 766 (1918)—§ 40.40
- Rosenau v. Peterson, 147 Minn. 95, 179 N.W. 647 (1920)—§ 25.45
- Rosenblatt v. Baer, 383 U.S. 75, 86 S. Ct. 669, 15 L. Ed. 2d 597 (1966)—§§ Cat. 50, Intro., 50.40
- Rosenbloom v. Metromedia, Inc., 403 U.S. 29, 91 S. Ct. 1811, 29 L. Ed. 2d 296 (1971)—§§ Cat. 50, Intro., 50.40
- Rosenfeldt's Will, In re, 185 Minn. 425, 241 N.W. 573 (1932)—§ 23.10
- Rosenthal v. Hill Top Riding Academy, Inc., 261 Minn. 88, 110 N.W.2d 854 (1961)—§ Cat. 38, Intro.
- Rosin v. International Harvester Co., 262 Minn. 445, 115 N.W.2d 50 (1962)—§ 75.35
- Rosmo v. Amherst Holding Co., 235 Minn. 320, 50 N.W.2d 698 (1951)—§ 85.43
- Ross v. Great Northern Ry. Co., 101 Minn. 122, 111 N.W. 951 (1907)—§ 91.41
- Ross v. Ross, 294 Minn. 115, 200 N.W.2d 149 (1972)—§ Cat. 45, Intro.
- Rouse v. Dunkley & Bennett, P.A., 520 N.W.2d 406 (Minn. 1994)—§§ Cat. 50, Intro., 50.25, Cat. 80, Intro., 80.55, 80.66
- Rowe v. Munye, 702 N.W.2d 729 (Minn. 2005)—§§ Cat. 90, Intro., 90.15, 91.40, 91.41
- Royal Realty Co. v. Levin, 244 Minn. 288, 69 N.W.2d 667 (1955)—§ 40.40
- Ruberg v. Skelly Oil Co., 297 N.W.2d 746 (Minn. 1980)—§§ 15.15, 27.15, 27.20
- Rucker v. Schmidt, 794 N.W.2d 114 (Minn. 2011)—§ Cat. 80, Intro.
- Rudd v. Village of Bovey, 252 Minn. 151, 89 N.W.2d 689 (1958)—§§ Cat. 85, Intro., 85.63
- Rudebeck v. Paulson, 612 N.W.2d 450 (Minn. Ct. App. 2000)—§§ 50.30, 50.35, 50.94, 50.96
- Rudnitski v. Seely, 452 N.W.2d 664 (Minn. 1990)—§ 60.65
- Rum River Lumber Co. v. State, 282 N.W.2d 882 (Minn. 1979)—§ 80.46
- Rusciano v. State Farm Mut. Auto. Ins. Co., 445 N.W.2d 271 (Minn. Ct. App. 1989)—§ 65.10
- Ruth v. Hutchinson Gas Co., 209 Minn. 248, 296 N.W. 136 (1941)—§ 30.65
- Rutz v. Iacono, 229 Minn. 591, 40 N.W.2d 892 (1949)—§ 65.20
- Ruud v. Great Plains Supply, Inc., 526 N.W.2d 369 (Minn. 1995)—§ 20.50

- R.W. v. T.F., 528 N.W.2d 869 (Minn. 1995)—§§ Cat. 25, Intro., 59.30, 60.10
- Ryan v. St. Paul Union Depot Co., 168 Minn. 287, 210 N.W. 32 (1926)—§ 25.50
- Ryan by Ryan v. McDonough Power Equipment, Inc., 734 F.2d 385, 15 Fed. R. Evid. Serv. 1573 (8th Cir. 1984)—§ 15.40
- Rye v. Phillips, 203 Minn. 567, 282 N.W. 459, 119 A.L.R. 1120 (1938)—§§ Cat. 20, Intro., 20.41
- Rylands v. Fletcher, L.R. 3 H.L. 330 (1868)—§ Cat. 25, Intro.
- Rylands v. Fletcher, 1865, 3 H. & C. 774, L.R. 1 Ex. 265, L.R. 3 H.L. 330—§ 85.55
- Ryman v. Alt, 266 N.W.2d 504 (Minn. 1978)—§§ Cat. 38, Intro., 38.10, 38.20, 38.70

**S**

- Sabraski v. Northern States Power Co., 304 N.W.2d 635 (Minn. 1981)—§ 10.45
- Sachs v. Chiat, 281 Minn. 540, 162 N.W.2d 243 (1968)—§ 85.55
- Sackett v. Haeckel, 249 Minn. 290, 81 N.W.2d 833 (1957)—§ 65.20
- Salin v. Kloempken, 322 N.W.2d 736 (Minn. 1982)—§§ Cat. 45, Intro., 91.55
- Salinas v. Chicago Park Dist., 189 Ill. App. 3d 55, 136 Ill. Dec. 660, 545 N.E.2d 184 (1st Dist. 1989)—§ 85.19
- Sand v. City of Little Falls, 237 Minn. 233, 55 N.W.2d 49 (1952)—§§ Cat. 85, Intro., 85.60
- Sandborg v. Blue Earth County, 615 N.W.2d 61 (Minn. 2000)—§§ Cat. 28, Intro., 38.20
- Sanders v. Chartrand, 158 Mo. 352, 59 S.W. 95 (1900)—§ 22.30
- Sandhofer v. Abbott-Northwestern Hospital, 283 N.W.2d 362 (Minn. 1979)—§ 27.20
- Sanitary Farm Dairies, Inc. v. Wolf, 261 Minn. 166, 112 N.W.2d 42 (1961)—§ 23.10
- Sather v. Woodland Liquors, Inc., 597 N.W.2d 295 (Minn. Ct. App. 1999)—§ Cat. 45, Intro.
- Saturnini v. Rosenblum, 217 Minn. 147, 14 N.W.2d 108, 163 A.L.R. 294 (1944)—§§ Cat. 85, Intro., 85.46
- Sauer v. Rural Co-op. Power Ass'n of Maple Lake, 225 Minn. 356, 31 N.W.2d 15 (1948)—§ 27.15
- Savage, City of v. Formanek, 459 N.W.2d 173 (Minn. Ct. App. 1990)—§§ 20.76, 20.79
- Sawyer v. Tildahl, 275 Minn. 457, 148 N.W.2d 131 (1967)—§ 57.10
- Saylor v. Sass, 258 Minn. 300, 104 N.W.2d 36 (1960)—§ 91.60
- Scattergood v. Keil, 233 Minn. 340, 45 N.W.2d 650 (1951)—§ 25.47
- Schafer v. JLC Food Systems, Inc., 695 N.W.2d 570 (Minn. 2005)—§§ 75.32, 75.60
- Schaffer v. Spirit Mountain Recreation Area Authority, 541 N.W.2d 357 (Minn. Ct. App. 1995)—§ 85.19
- Schendel v. Hennepin County Medical Center, 484 N.W.2d 803 (Minn. Ct. App. 1992)—§ 15.40



## TABLE OF CASES

- Schlick v. Berg, 205 Minn. 465, 286 N.W. 356 (1939)—§ 30.30
- Schlieman v. Gannett Minnesota Broadcasting, Inc., 637 N.W.2d 297 (Minn. Ct. App. 2001)—§§ 50.10, 50.25, 50.93, 50.94, 50.96
- Schmanski v. Church of St. Casimir of Wells, 243 Minn. 289, 67 N.W.2d 644 (1954)—§ 25.10
- Schmidt v. Beninga, 285 Minn. 477, 173 N.W.2d 401 (1970)—§§ Cat. 25, Intro., 25.47
- Schmitz v. U.S. Steel Corp., 831 N.W.2d 656 (Minn. Ct. App. 2013)—§ 55.65
- Schneider v. Buckman, 433 N.W.2d 98 (Minn. 1988)—§§ Cat. 28, Intro., Cat. 30, Intro.
- Schneider ex rel. Schneider v. Erickson, 654 N.W.2d 144 (Minn. Ct. App. 2002)—§§ Cat. 28, Intro., 28.30
- Schore v. Mueller, 290 Minn. 186, 186 N.W.2d 699 (1971)—§ 91.40
- Schornak v. St. Paul Fire & Marine Ins. Co., 96 Minn. 299, 104 N.W. 1087 (1905)—§ 59.15
- Schroeder v. Jesco, Inc., 296 Minn. 447, 209 N.W.2d 414 (1973)—§ 28.25
- Schroht v. Voll, 245 Minn. 114, 71 N.W.2d 843 (1955)—§ 91.75
- Schrunk v. Andres, 221 Minn. 465, 22 N.W.2d 548 (1946)—§ 85.10
- Schubitzke v. Minneapolis, St. P. & S. S. M. R. Co., 244 Minn. 156, 69 N.W.2d 104 (1955)—§ 65.10
- Schuler v. Meschke, 435 N.W.2d 156 (Minn. Ct. App. 1989)—§§ 25.37, 57.20
- Schumacher v. Ihrke, 469 N.W.2d 329 (Minn. Ct. App. 1991)—§ 40.40
- Schutt v. Adair, 99 Minn. 7, 108 N.W. 811 (1906)—§ 25.45
- Schweich v. Ziegler, Inc., 463 N.W.2d 722 (Minn. 1990)—§ Cat. 25, Intro.
- SCI Minnesota Funeral Services, Inc. v. Washburn-McReavy Funeral Corp., 795 N.W.2d 855 (Minn. 2011)—§ 20.76
- Scott v. Forest Lake Chrysler-Plymouth-Dodge, 668 N.W.2d 45 (Minn. Ct. App. 2003)—§ Cat. 25, Intro.
- Scott v. Independent School Dist. 709, Duluth, 256 N.W.2d 485 (Minn. 1977)—§§ Cat. 25, Intro., 25.45
- Scott v. Village of Olivia, 260 Minn. 346, 110 N.W.2d 21 (1961)—§§ Cat. 85, Intro., 85.60
- Scott Fetzer Co. v. Williamson, 101 F.3d 549 (8th Cir. 1996)—§ 50.30
- SCSC Corp. v. Allied Mut. Ins. Co., 536 N.W.2d 305 (Minn. 1995)—§§ Cat. 59, Intro., 59.10, 59.15, 59.20
- Security Mut. Cas. Co. v. Affiliated FM Ins. Co., 471 F.2d 238 (8th Cir. 1972)—§ 59.25
- Seekins v. Duluth, M. & I. R. Ry. Co., 258 Minn. 180, 103 N.W.2d 239 (1960)—§ 48.45
- Seeley v. Sobczak, 281 N.W.2d 368 (Minn. 1979)—§§ Cat. 45, Intro., 45.15, 45.25
- Segal v. Bloom Bros. Co., 249 Minn. 367, 82 N.W.2d 359 (1957)—§ 25.52
- Seidl v. Trollhaugen, Inc., 305 Minn. 506, 232 N.W.2d 236 (1975)—§ 30.15

- Seim v. Garavalia, 306 N.W.2d 806 (Minn. 1981)—§§ 10.45, 25.45, Cat. 28, Intro., 28.15, Cat. 38, Intro., 38.20, 38.30, 38.50, 38.92
- Seivert v. Bass, 288 Minn. 457, 181 N.W.2d 888 (1970)—§ 25.12
- Selover v. Hedwall, 149 Minn. 302, 184 N.W. 180 (1921)—§ 23.10
- Semrad v. Edina Realty, Inc., 493 N.W.2d 528 (Minn. 1992)—§§ 30.30, 55.25
- Sentinel Management Co. v. Aetna Cas. and Sur. Co., 615 N.W.2d 819 (Minn. 2000)—§ 12.30
- Serr v. Biwabik Concrete Aggregate Co., 202 Minn. 165, 278 N.W. 355, 117 A.L.R. 1009 (1938)—§ 20.76
- Seward v. Minneapolis St. Ry. Co., 222 Minn. 454, 25 N.W.2d 221 (1946)—§ 27.20
- Shawley v. Husman, 247 Minn. 510, 78 N.W.2d 60 (1956)—§§ Cat. 70, Intro., 70.10
- Shepherd of the Valley Lutheran Church of Hastings v. Hope Lutheran Church of Hastings, 626 N.W.2d 436 (Minn. Ct. App. 2001)—§ 23.10
- Shepstedt v. Hayes, 221 Minn. 74, 21 N.W.2d 199 (1945)—§§ Cat. 85, Intro., 85.60
- Sherlock v. Stillwater Clinic, 260 N.W.2d 169 (Minn. 1977)—§ Cat. 80, Intro.
- Shetka v. Kueppers, Kueppers, Von Feldt and Salmen, 454 N.W.2d 916 (Minn. 1990)—§§ Cat. 30, Intro., Cat. 94, Intro.
- Shigellosis Litigation, In re, 647 N.W.2d 1 (Minn. Ct. App. 2002)—§§ 75.20, 75.31, 75.35
- Short v. Dairyland Ins. Co., 334 N.W.2d 384 (Minn. 1983)—§§ 23.10, 59.35
- Short v. Sun Newspapers, Inc., 300 N.W.2d 781 (Minn. 1980)—§ 20.15
- Shulman v. Group W Productions, Inc., 18 Cal. 4th 200, 74 Cal. Rptr. 2d 843, 955 P.2d 469 (1998)—§§ Cat. 72, Intro., 72.20
- Silicone Implant Ins. Coverage Litigation, In re, 652 N.W.2d 46 (Minn. Ct. App. 2002)—§ 59.25
- Silver v. Redleaf, 292 Minn. 463, 194 N.W.2d 271 (1972)—§ Cat. 80, Intro.
- Simchuck v. Fullerton, 299 Minn. 91, 216 N.W.2d 683 (1974)—§§ 15.10, 65.25, 65.30
- Simon v. Carroll, 241 Minn. 211, 62 N.W.2d 822 (1954)—§ 15.10
- Simpson v. American Family Ins. Co., 603 N.W.2d 860 (Minn. Ct. App. 2000)—§ 65.90
- Sina v. Carlson, 120 Minn. 283, 139 N.W. 601 (1913)—§ 30.15
- Singleton v. Christ the Servant Evangelical Lutheran Church, 541 N.W.2d 606 (Minn. Ct. App. 1996)—§§ 20.55, 60.75
- Sirek by Beaumaster v. State, Dept. of Natural Resources, 496 N.W.2d 807 (Minn. 1993)—§§ Cat. 85, Intro., 85.13, 85.19, 85.31
- 614 Co. v. Minneapolis Community Development Agency, 547 N.W.2d 400 (Minn. Ct. App. 1996)—§§ Cat. 52, Intro., 52.15
- S.J. Groves & Sons Co. v. Aerospatiale Helicopter Corp., 374 N.W.2d 431, 42 U.C.C. Rep. Serv. 100 (Minn. 1985)—§ Cat. 75, Intro.
- Skala v. Lindbeck, 171 Minn. 410, 214 N.W. 271 (1927)—§ 85.80

## TABLE OF CASES

- Skare v. Extendicare Health Services, Inc., 515 F.3d 836 (8th Cir. 2008)—§ 55.65
- Skelly v. Mount, 620 N.W.2d 566 (Minn. Ct. App. 2000)—§ Cat. 45, Intro.
- Skillings v. Allen, 143 Minn. 323, 173 N.W. 663, 5 A.L.R. 922 (1919)—§ Cat. 80, Intro.
- Sletten v. Ramsey County, 675 N.W.2d 291 (Minn. 2004)—§ 25.40
- Slinker v. Wallner, 258 Minn. 243, 103 N.W.2d 377 (1960)—§ 85.19
- Smith v. Brutger Companies, 569 N.W.2d 408 (Minn. 1997)—§§ Cat. 57, Intro., 57.20
- Smith v. Daily Mail Pub. Co., 443 U.S. 97, 99 S. Ct. 2667, 61 L. Ed. 2d 399 (1979)—§§ Cat. 72, Intro., 72.20
- Smith v. Village of Hibbing, 272 Minn. 1, 136 N.W.2d 609 (1965)—§§ Cat. 85, Intro., 85.65
- Smith v. Higgins, 819 S.W.2d 710 (Ky. 1991)—§ 65.40
- Smith v. Hubbard, 253 Minn. 215, 91 N.W.2d 756 (1958)—§ 60.25
- Smith v. Kahler Corp., Inc., 297 Minn. 272, 211 N.W.2d 146 (1973)—§ 27.15
- Smith v. Knowles, 281 N.W.2d 653 (Minn. 1979)—§ Cat. 80, Intro.
- Smith v. State Farm Fire and Cas. Co., 656 N.W.2d 432 (Minn. Ct. App. 2003)—§ 59.20
- Smith v. St. Paul City Ry. Co., 32 Minn. 1, 18 N.W. 827 (1884)—§ 48.15
- Smith v. Toomey, 1997 WL 526316 (Minn. Ct. App. 1997)—§ 85.82
- Smith v. Van Gorkom, 488 A.2d 858, 46 A.L.R.4th 821 (Del. 1985)—§ 23.10
- Smits v. E-Z Por Corp., 365 N.W.2d 352 (Minn. Ct. App. 1985)—§ Cat. 75, Intro.
- Smits v. Wal-Mart Stores, Inc., 525 N.W.2d 554 (Minn. Ct. App. 1994)—§ 60.70
- Snilsberg v. Lake Washington Club, 614 N.W.2d 738 (Minn. Ct. App. 2000)—§ 28.30
- Snyder v. City of Minneapolis, 441 N.W.2d 781 (Minn. 1989)—§§ 25.40, 25.90
- Soo Line R. Co. v. Fruehauf Corp., 547 F.2d 1365, 1 Fed. R. Evid. Serv. 1298, 20 U.C.C. Rep. Serv. 1181 (8th Cir. 1977)—§ 22.70
- Sorensen v. Maski, 361 N.W.2d 498 (Minn. Ct. App. 1985)—§ 12.40
- Sorenson v. Chevrolet Motor Co., 171 Minn. 260, 214 N.W. 754, 84 A.L.R. 35 (1927)—§ Cat. 25, Intro.
- Sorenson v. Kruse, 293 N.W.2d 56 (Minn. 1980)—§§ 15.10, 15.35
- Sorenson v. Safety Flate, Inc., 298 Minn. 353, 216 N.W.2d 859 (1974)—§§ Cat. 75, Intro., 75.10
- Soucek v. Banham, 503 N.W.2d 153 (Minn. Ct. App. 1993)—§ 25.90
- Souder v. Owens-Corning Fiberglas Corp., 939 F.2d 647, 20 Fed. R. Serv. 3d 1314 (8th Cir. 1991)—§ 75.50
- Soules v. Independent School Dist. No. 518, 258 N.W.2d 103 (Minn. 1977)—§ 91.47
- Sowada v. Motzko, 256 Minn. 395, 98 N.W.2d 182 (1959)—§ 27.20
- Space Center, Inc. v. 451 Corp., 298 N.W.2d 443, 13 A.L.R.4th 912 (Minn. 1980)—§§ Cat. 20, Intro., 20.46, 40.30



- Spaeth v. City of Plymouth, 344 N.W.2d 815 (Minn. 1984)—§§ Cat. 52, Intro., 52.10
- Spannaus v. Larkin, Hoffman, Daly, and Lindgren, Ltd., 368 N.W.2d 395 (Minn. Ct. App. 1985)—§ 80.55
- Spannaus v. Otolaryngology Clinic, 308 Minn. 334, 242 N.W.2d 594 (1976)—§ 25.50
- Specialized Tours, Inc. v. Hagen, 392 N.W.2d 520 (Minn. 1986)—§§ Cat. 57, Intro., 57.10
- Spencer v. Johnson, 203 Minn. 402, 281 N.W. 879 (1938)—§ 25.45
- Spice Corp. v. Foresight Marketing Partners, Inc., 2011 WL 6740333 (D. Minn. 2011)—§ 40.40
- Spiess v. Brandt, 230 Minn. 246, 41 N.W.2d 561, 27 A.L.R.2d 1 (1950)—§ 14.15
- Spinett, Inc. v. Peoples Natural Gas Co., a Div. of InterNorth, Inc., 385 N.W.2d 834 (Minn. Ct. App. 1986)—§ 25.50
- Sporna v. Kalina, 184 Minn. 89, 237 N.W. 841, 76 A.L.R. 1280 (1931)—§ 27.20
- Sprangers v. Interactive Technologies, Inc., 394 N.W.2d 498 (Minn. Ct. App. 1986)—§§ Cat. 20, Intro., 20.60
- Springrose v. Willmore, 292 Minn. 23, 192 N.W.2d 826 (1971)—§§ Cat. 28, Intro., 28.15, 28.25, 28.30, 65.15
- Squillace v. Village of Mountain Iron, 223 Minn. 8, 26 N.W.2d 197 (1946)—§§ Cat. 85, Intro., 85.63
- Staab v. Diocese of St. Cloud, 813 N.W.2d 68 (Minn. 2012)—§§ 15.40, Cat. 28, Intro., 28.91
- Stadler v. Cross, 295 N.W.2d 552 (Minn. 1980)—§ 91.10
- Staloch v. Belsaas, 271 Minn. 315, 136 N.W.2d 92 (1965)—§§ 27.10, Cat. 48, Intro., 48.15, 48.20
- St. Amant v. Thompson, 390 U.S. 727, 88 S. Ct. 1323, 20 L. Ed. 2d 262 (1968)—§§ Cat. 25, Intro., Cat. 50, Intro., 50.35, 50.40, 50.93, 50.94
- Standafer v. First Nat. Bank of Minneapolis, 243 Minn. 442, 68 N.W.2d 362 (1955)—§§ Cat. 85, Intro., 85.43
- Standafer v. First Nat. Bank of Minneapolis, 236 Minn. 123, 52 N.W.2d 718 (1952)—§ 25.45
- STAR Centers, Inc. v. Faegre & Benson, L.L.P., 644 N.W.2d 72 (Minn. 2002)—§ 23.10
- Stark v. Equitable Life Assur. Soc. of U. S., 205 Minn. 138, 285 N.W. 466 (1939)—§ 57.10
- State v. Anderson, 176 Minn. 525, 223 N.W. 923 (1929)—§ 52.75
- State v. Bland, 337 N.W.2d 378 (Minn. 1983)—§§ 60.30, 60.35
- State v. Carothers, 594 N.W.2d 897 (Minn. 1999)—§§ 60.35, 60.39
- State v. Crawley, 819 N.W.2d 94 (Minn. 2012)—§ Cat. 50, Intro.
- State v. Glowacki, 630 N.W.2d 392 (Minn. 2001)—§ 60.35
- State v. Grecinger, 569 N.W.2d 189 (Minn. 1997)—§ 12.30
- State v. Hayes, 244 Minn. 296, 70 N.W.2d 110 (1955)—§ 25.10
- State v. Johnson, 719 N.W.2d 619 (Minn. 2006)—§ 60.35
- State v. Johnson, 568 N.W.2d 426 (Minn. 1997)—§ 12.25
- State v. Larson, 281 N.W.2d 481 (Minn. 1979)—§ 12.15
- State v. Paskewitz, 233 Minn. 452, 47 N.W.2d 199 (1951)—§ 25.55

## TABLE OF CASES

- State v. Pendleton, 567 N.W.2d 265 (Minn. 1997)—§ 60.39
- State v. Penkaty, 708 N.W.2d 185 (Minn. 2006)—§ 60.35
- State v. Poganski, 257 N.W.2d 578 (Minn. 1977)—§ 12.25
- State v. Radke, 821 N.W.2d 316 (Minn. 2012)—§ 60.35
- State v. Robinson, 266 Minn. 166, 123 N.W.2d 812 (1963)—§ 52.75
- State v. Villalon, 305 Minn. 547, 234 N.W.2d 189 (1975)—§ 12.35
- State v. Lowell, 78 Minn. 166, 80 N.W. 877 (1899)—§ 91.70
- State Auto. & Cas. Underwriters v. Casualty Underwriters, Inc., 266 Minn. 536, 124 N.W.2d 185 (1963)—§ Cat. 59, Intro.
- State by Attorney General v. Wren Inc., 275 Minn. 259, 146 N.W.2d 547 (1966)—§§ Cat. 52, Intro., 52.10
- State by Beaulieu v. City of Mounds View, 518 N.W.2d 567 (Minn. 1994)—§§ Cat. 25, Intro., 25.40
- State by Cooper v. Mower County Social Services, 434 N.W.2d 494 (Minn. Ct. App. 1989)—§ 60.75
- State by Crow Wing Environment Protection Ass'n, Inc. v. City of Breezy Point, 394 N.W.2d 592 (Minn. Ct. App. 1986)—§ Cat. 20, Intro.
- State by Humphrey v. Briggs, 488 N.W.2d 811 (Minn. Ct. App. 1992)—§ 52.25
- State by Humphrey v. Strom, 493 N.W.2d 554 (Minn. 1992)—§§ Cat. 52, Intro., 52.40, 52.50, 52.55
- State by Humphrey v. Philip Morris Inc., 551 N.W.2d 490 (Minn. 1996)—§ 57.40
- State by Lord v. Hayden Miller Co., 263 Minn. 29, 116 N.W.2d 535 (1962)—§ 52.65
- State by Lord v. Kohler, 268 Minn. 77, 128 N.W.2d 90 (1964)—§ 52.45
- State by Lord v. North Star Concrete Co., Parcel Channel Change No. 26, 265 Minn. 483, 122 N.W.2d 118 (1963)—§ 52.65
- State, by Lord v. Pahl, 257 Minn. 177, 100 N.W.2d 724 (1960)—§ 52.20
- State by Lord v. Pahl, 254 Minn. 349, 95 N.W.2d 85 (1959)—§§ 52.65, 92.15
- State by Lord v. Pearson, 260 Minn. 477, 110 N.W.2d 206 (1961)—§§ 52.20, 52.30, 52.65
- State by Mattson v. Prow's Motel, Inc., 285 Minn. 1, 171 N.W.2d 83 (1969)—§§ Cat. 52, Intro., 52.10, 52.45
- State by McClure v. Sports and Health Club, Inc., 370 N.W.2d 844 (Minn. 1985)—§ 23.10
- State by Mondale v. Gannons Inc., 275 Minn. 14, 145 N.W.2d 321 (1966)—§§ Cat. 52, Intro., 52.40, 52.45, 52.50, 52.55
- State by Mondale v. Larson, 285 Minn. 467, 174 N.W.2d 114 (1970)—§§ Cat. 52, Intro., 52.40
- State by Mondale v. McAndrews, 286 Minn. 115, 175 N.W.2d 492 (1970)—§§ Cat. 52, Intro., 52.10
- State, by Peterson v. Andrews, 209 Minn. 578, 297 N.W. 848 (1941)—§ 52.25
- State by Spannaus v. Belmont, Holmberg, 384 N.W.2d 214 (Minn. Ct. App. 1986)—§§ 52.30, 52.75
- State by Spannaus v. Century Camera, Inc., 309 N.W.2d 735, 23 A.L.R.4th 171 (Minn. 1981)—§ 57.40

- State by Spannaus v. Dangers, 312 N.W.2d 668 (Minn. 1981)—§§ Cat. 52, Intro., 52.40
- State By Waste Management Bd. v. Bruesehoff, 343 N.W.2d 292 (Minn. Ct. App. 1984)—§§ Cat. 52, Intro., 52.15
- State Farm Fire & Cas. Co. v. Short, 459 N.W.2d 111 (Minn. 1990)—§ 10.20
- State Farm Fire & Cas. Co. v. Wicka, 474 N.W.2d 324 (Minn. 1991)—§ 59.30
- State Farm Fire and Cas. Co. v. Williams, 355 N.W.2d 421 (Minn. 1984)—§ 59.30
- State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585, 60 Fed. R. Evid. Serv. 1349, 1 A.L.R. Fed. 2d 739 (2003)—§§ Cat. 94, Intro., 94.10
- State Farm Mut. Auto. Ins. Co. v. Ford Motor Co., 572 N.W.2d 321, 36 U.C.C. Rep. Serv. 2d 719 (Minn. Ct. App. 1997)—§ Cat. 75, Intro.
- State Farm Mut. Auto. Ins. Co. v. Village of Isle, 265 Minn. 360, 122 N.W.2d 36 (1963)—§§ Cat. 45, Intro., 45.45, Cat. 50, Intro., Cat. 72, Intro., 72.25
- St. Cloud Aviation, Inc. v. Hubbell, 356 N.W.2d 749 (Minn. Ct. App. 1984)—§ 23.10
- Stearns v. Plucinski, 482 N.W.2d 496 (Minn. Ct. App. 1992)—§§ 25.50, 25.55
- Stehlik v. Rhoads, 2002 WI 73, 253 Wis. 2d 477, 645 N.W.2d 889 (2002)—§§ Cat. 28, Intro., 28.15
- Steinbrecher v. McLeod Co-op. Power Ass'n, 392 N.W.2d 709 (Minn. Ct. App. 1986)—§§ 15.40, 25.46
- Steiner v. Beaudry Oil & Service, Inc., 545 N.W.2d 39 (Minn. Ct. App. 1996)—§ 28.15
- Stelling v. Hanson Silo Co., 563 N.W.2d 286 (Minn. Ct. App. 1997)—§ 30.70
- Stelter v. Chiquita Processed Foods, L.L.C., 658 N.W.2d 242 (Minn. Ct. App. 2003)—§ 25.50
- Stenger v. State, 449 N.W.2d 483 (Minn. Ct. App. 1989)—§ 52.30
- Stenshoel v. Great Northern Ry. Co., 142 Minn. 14, 170 N.W. 695 (1919)—§ 91.35
- Stenvik v. Constant, 502 N.W.2d 416 (Minn. Ct. App. 1993)—§ 90.25
- Stephenson v. Plastics Corp. of America, 276 Minn. 400, 150 N.W.2d 668 (1967)—§§ 40.30, 40.40
- Sterling Capital Advisors, Inc. v. Herzog, 575 N.W.2d 121 (Minn. Ct. App. 1998)—§ 20.55
- Sternitzke v. Donahue's Jewelers, 249 Minn. 514, 83 N.W.2d 96 (1957)—§§ Cat. 85, Intro., 85.60, 85.63
- Stevenson v. Brodt, 2010 WL 4068727 (Minn. Ct. App. 2010)—§ 85.80
- Stewart v. Budget Rent-A-Car Corp., 52 Haw. 71, 470 P.2d 240 (1970)—§ 75.45
- Stiele ex rel. Gladieux v. City of Crystal, 646 N.W.2d 251 (Minn. Ct. App. 2002)—§ 85.31
- Stinson v. Chicago, St. P. & M. R. Co., 27 Minn. 284, 6 N.W. 784 (1880)—§§ Cat. 52, Intro., 52.40



## TABLE OF CASES

- St. Laurent v. Kaiser Aluminum & Chemical Corp., 113 R.I. 10, 316 A.2d 504 (1974)—§ 65.40
- St. Louis Park, City of v. Almor Co., 313 N.W.2d 606 (Minn. 1981)—§ 52.45
- St. Louis Park Inv. Co. v. R.L. Johnson Inv. Co., Inc., 411 N.W.2d 288 (Minn. Ct. App. 1987)—§ 20.77
- Stokes v. CBS Inc., 25 F. Supp. 2d 992 (D. Minn. 1998)—§ Cat. 50, Intro.
- St. Paul-Mercury Indemnity Co. v. St. Joseph's Hospital, 212 Minn. 558, 4 N.W.2d 637 (1942)—§ 80.43
- St. Paul, City of v. Rein Recreation, Inc., 298 N.W.2d 46 (Minn. 1980)—§§ Cat. 52, Intro., 52.40
- St. Paul Mercury Ins. Co. v. Dahlberg, Inc., 596 N.W.2d 674 (Minn. Ct. App. 1999)—§ 59.15
- Strand v. Village of Watson, 245 Minn. 414, 72 N.W.2d 609 (1955)—§§ Cat. 45, Intro., 45.10, 45.15, 45.25
- Strauss v. Thorne, 490 N.W.2d 908 (Minn. Ct. App. 1992)—§ 50.30
- Stringer v. Minnesota Vikings Football Club, LLC, 705 N.W.2d 746 (Minn. 2005)—§ 55.34
- Strobel v. Chicago, R. I. & P. R. Co., 255 Minn. 201, 96 N.W.2d 195 (1959)—§§ 27.10, 27.20
- Strode v. Becker, 206 Ill. App. 3d 398, 151 Ill. Dec. 420, 564 N.E.2d 875 (4th Dist. 1990)—§ 85.19
- Strom v. C.C., 1997 WL 118253 (Minn. Ct. App. 1997)—§ Cat. 80, Intro.
- Strong v. Shefveland, 249 Minn. 59, 81 N.W.2d 247 (1957)—§§ Cat. 85, Intro., 85.43
- Strouth v. Wilkison, 302 Minn. 297, 224 N.W.2d 511 (1974)—§§ Cat. 57, Intro., 57.25
- Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 24 A.L.R.4th 132 (Minn. 1980)—§§ Cat. 50, Intro., 50.15, 50.30, 50.35, 50.50, 50.60, 50.90, 50.91, 50.94, 50.96
- Sullivan v. Minneapolis St. Ry. Co., 161 Minn. 45, 200 N.W. 922 (1924)—§ 25.50
- Sullivan v. Spot Weld, Inc., 560 N.W.2d 712 (Minn. Ct. App. 1997)—§ 55.25
- Summers v. Tice, 33 Cal. 2d 80, 199 P.2d 1, 5 A.L.R.2d 91 (1948)—§ 25.50
- Superwood Corp. v. Siempelkamp Corp., 311 N.W.2d 159, 32 U.C.C. Rep. Serv. 28 (Minn. 1981)—§ Cat. 75, Intro.
- Sutherland v. Barton, 570 N.W.2d 1 (Minn. 1997)—§ 85.25
- Svercl v. Jamison, 252 Minn. 8, 88 N.W.2d 839 (1958)—§ 65.35
- Swagger v. City of Crystal, 379 N.W.2d 183 (Minn. Ct. App. 1985)—§§ Cat. 28, Intro., 28.30
- Swaney v. Crawley, 154 Minn. 263, 191 N.W. 583 (1923)—§ 40.30
- Swanlund v. Shimano Indus. Corp., Ltd., 459 N.W.2d 151 (Minn. Ct. App. 1990)—§ Cat. 94, Intro.
- Swanson v. Brewster, 784 N.W.2d 264 (Minn. 2010)—§ Cat. 90, Intro.
- Swanson v. Carlson, 231 Minn. 373, 43 N.W.2d 217 (1950)—§ 65.10

- Swanson v. La Fontaine, 238 Minn. 460, 57 N.W.2d 262 (1953)—  
§ 27.15
- Swanson v. Minneapolis Street Ry. Co., 252 Minn. 484, 90 N.W.2d 514  
(1958)—§§ Cat. 48, Intro., 48.10
- Swarthout v. Mutual Service Life Ins. Co., 632 N.W.2d 741 (Minn. Ct.  
App. 2001)—§ 72.10
- Swedeen v. Swedeen, 270 Minn. 491, 134 N.W.2d 871 (1965)—§ 59.25
- Swenson v. Bender, 764 N.W.2d 596 (Minn. Ct. App. 2009)—§ 23.10
- Swenson v. Slawik, 236 Minn. 403, 53 N.W.2d 107 (1952)—§§ Cat. 85,  
Intro., 85.43
- Swigerd v. City of Ortonville, 246 Minn. 339, 75 N.W.2d 217, 72  
A.L.R.2d 398 (1956)—§§ 80.31, 80.43
- Sylvester v. Northwestern Hosp. of Minneapolis, 236 Minn. 384, 53  
N.W.2d 17 (1952)—§§ 25.14, 80.37, 80.46
- Sylvestre v. State, 298 Minn. 142, 214 N.W.2d 658 (1973)—§§ Cat. 20,  
Intro., 20.35
- Symalla v. Dusenka, 206 Minn. 280, 288 N.W. 385 (1939)—§ 60.30
- Synnott v. Midway Hospital, 287 Minn. 270, 178 N.W.2d 211 (1970)—  
§ 80.43
- Szyplinski v. Midwest Mobile Home Supply Co., Inc., 308 Minn. 152,  
241 N.W.2d 306 (1976)—§ 85.19

T

- Tabish v. Target Corp., 2011 WL 2519209 (Minn. Ct. App. 2011)—  
§ Cat. 75, Intro.
- Taney v. Independent School Dist. No. 624, 673 N.W.2d 497, 184 Ed.  
Law Rep. 568 (Minn. Ct. App. 2004)—§ 85.50
- Tanski v. Jackson, 269 Minn. 304, 130 N.W.2d 492 (1964)—§ 65.35
- Target Stores, Inc. v. Twin Plaza Co., 277 Minn. 481, 153 N.W.2d 832  
(1967)—§ 23.10
- Tatro v. Carlson, 271 Minn. 536, 137 N.W.2d 187 (1965)—§ 65.15
- Tatter v. Board of Ed. of Independent School Dist. No. 306, 490 F. Supp.  
494 (D. Minn. 1980)—§§ Cat. 20, Intro., 20.10
- Taubert v. Taubert, 103 Minn. 247, 114 N.W. 763 (1908)—§ 91.70
- Taylor v. Allstate Ins. Co., 286 Minn. 449, 176 N.W.2d 266 (1970)—  
§ 32.15
- Teeman v. Jurek, 312 Minn. 292, 251 N.W.2d 698, 21 U.C.C. Rep. Serv.  
506 (1977)—§§ Cat. 20, Intro., 20.46
- Teffeteller v. University of Minnesota, 645 N.W.2d 420 (Minn. 2002)—  
§ Cat. 80, Intro.
- Telex Corp. v. Data Products Corp., 271 Minn. 288, 135 N.W.2d 681  
(1965)—§ Cat. 20, Intro.
- Ten Broeck v. Journal Printing Co., 166 Minn. 173, 207 N.W. 497  
(1926)—§ Cat. 50, Intro.
- Terveer v. Norling Bros. Silo Co., Inc., 365 N.W.2d 279 (Minn. Ct. App.  
1985)—§§ Cat. 25, Intro., 25.35, 55.34
- Terwilliger v. Hennepin County, 561 N.W.2d 909 (Minn. 1997)—§ 25.40
- Teske v. Steele County, 284 Minn. 559, 170 N.W.2d 234 (1969)—§ 85.63
- Thelen v. Spilman, 251 Minn. 89, 86 N.W.2d 700, 77 A.L.R.2d 1315  
(1957)—§ 27.20

## TABLE OF CASES

- Thelen By and Through Thelen v. St. Cloud Hosp., 379 N.W.2d 189 (Minn. Ct. App. 1985)—§ 25.45
- Thief River Falls, City of v. United Fire & Cas. Co., 336 N.W.2d 274 (Minn. 1983)—§§ Cat. 52, Intro., 52.10
- Thielbar v. Juenke, 291 Minn. 129, 189 N.W.2d 493 (1971)—§ 25.16
- Thoirs v. Pounsford, 210 Minn. 462, 299 N.W. 16 (1941)—§§ 91.75, 91.85
- Thomas v. Murphy, 87 Minn. 358, 91 N.W. 1097 (1902)—§ 20.75
- Thomas B. Olson & Associates, P.A. v. Leffert, Jay & Polglaze, P.A., 756 N.W.2d 907 (Minn. Ct. App. 2008)—§§ 23.10, 60.65
- Thommes v. Milwaukee Ins. Co., 641 N.W.2d 877 (Minn. 2002)—§ Cat. 59, Intro.
- Thompson v. Hill, 366 N.W.2d 628 (Minn. Ct. App. 1985)—§§ Cat. 28, Intro., 28.25, 65.15
- Thompson v. Hirano Tecseed Co., Ltd., 456 F.3d 805 (8th Cir. 2006)—§ 75.20
- Thomsen v. Independent School Dist. No. 91, Carlton County, Barnum, 309 Minn. 391, 244 N.W.2d 282 (1976)—§ 55.35
- Thoorsell v. City of Virginia, 138 Minn. 55, 163 N.W. 976 (1917)—§ Cat. 85, Intro.
- T.H.S. Northstar Associates v. W.R. Grace and Co., 66 F.3d 173 (8th Cir. 1995)—§ 75.40
- Tiemann v. Independent School Dist. # 740, 331 N.W.2d 250, 10 Ed. Law Rep. 357 (Minn. 1983)—§ 25.47
- Time, Inc. v. Firestone, 424 U.S. 448, 96 S. Ct. 958, 47 L. Ed. 2d 154 (1976)—§ Cat. 50, Intro.
- TJD Dissolution Corp. v. Savoie Supply Co., Inc., 460 N.W.2d 59 (Minn. Ct. App. 1990)—§ 80.64
- TMJ Implants Products Liability Litigation, In re, 872 F. Supp. 1019, 97 Ed. Law Rep. 697, 27 U.C.C. Rep. Serv. 2d 774 (D. Minn. 1995)—§ 75.26
- Todalen v. U.S. Chemical Co., 424 N.W.2d 73 (Minn. Ct. App. 1988)—§ Cat. 75, Intro.
- Toetschinger v. Ihnot, 312 Minn. 59, 250 N.W.2d 204 (1977)—§§ Cat. 28, Intro., Cat. 70, Intro., 70.10, 70.15
- Togstad v. Vesely, Otto, Miller & Keefe, 291 N.W.2d 686 (Minn. 1980)—§§ Cat. 80, Intro., 80.55, 80.64, 80.66
- Tolbert v. Gerber Industries, Inc., 255 N.W.2d 362 (Minn. 1977)—§§ Cat. 28, Intro., 75.35, 75.95, 75.96
- Tollefson v. Ehlers, 252 Minn. 370, 90 N.W.2d 205 (1958)—§ 91.85
- Tomfohr v. Mayo Foundation, 450 N.W.2d 121 (Minn. 1990)—§§ Cat. 28, Intro., 38.20, 80.37
- Tomforde v. Newman, 309 Minn. 254, 244 N.W.2d 47 (1976)—§ 65.25
- Toney v. WCCO Television, Midwest Cable and Satellite, Inc., 85 F.3d 383 (8th Cir. 1996)—§§ Cat. 50, Intro., 50.25
- Toombs v. Daniels, 361 N.W.2d 801 (Minn. 1985)—§ 23.10
- Torwick v. Lisle, 268 Minn. 197, 128 N.W.2d 330 (1964)—§§ Cat. 85, Intro., 85.52
- Toth v. Arason, 722 N.W.2d 437 (Minn. 2006)—§ 57.40



- Touma v. St. Mary's Bank, 142 N.H. 762, 712 A.2d 619 (1998)—§ 40.10
- Toussaint v. Blue Cross & Blue Shield of Michigan, 408 Mich. 579, 292 N.W.2d 880 (1980)—§ 55.50
- Tower Ins. Co., Inc. v. Judge, 840 F. Supp. 679 (D. Minn. 1993)—§ 59.30
- Tracey v. City of Minneapolis, 185 Minn. 380, 241 N.W. 390 (1932)—§§ Cat. 85, Intro., 85.63
- Trail v. Christian, 298 Minn. 101, 213 N.W.2d 618 (1973)—§ Cat. 45, Intro.
- Travelers Indem. Co. v. Bloomington Steel & Supply Co., 718 N.W.2d 888 (Minn. 2006)—§§ Cat. 59, Intro., 59.10, 59.15, 59.30
- Travertine Corp. v. Lexington-Silverwood, 683 N.W.2d 267 (Minn. 2004)—§ Cat. 20, Intro.
- Trebnick v. Gordon, 259 Minn. 164, 106 N.W.2d 622 (1960)—§ 65.30
- Trepanier v. McKenna, 267 Minn. 145, 125 N.W.2d 603 (1963)—§ 80.37
- Triple Five of Minnesota, Inc. v. Simon, 280 F. Supp. 2d 895 (D. Minn. 2003)—§ 23.10
- Truck Crane Service Co. v. Barr-Nelson, Inc., 329 N.W.2d 824 (Minn. 1983)—§ 30.30
- Trusteeship of Trust of Williams, In re, 631 N.W.2d 398 (Minn. Ct. App. 2001)—§ 23.10
- Trust Known as Great Northern Iron Ore Properties, Matter of, 263 N.W.2d 610 (Minn. 1978)—§ 23.10
- Trust of Baker, In re, 2001 WL 379927 (Minn. Ct. App. 2001)—§ 23.10
- Trusts Created by Hormel, Matter of, 504 N.W.2d 505 (Minn. Ct. App. 1993)—§ 23.10
- Tuckner v. Chouinard, 407 N.W.2d 723 (Minn. Ct. App. 1987)—§ 65.35
- Tuenge v. Konetski, 320 N.W.2d 420 (Minn. 1982)—§§ Cat. 90, Intro., 90.20
- Turk v. Long Branch Saloon Inc., 280 Minn. 438, 159 N.W.2d 903 (1968)—§§ Cat. 45, Intro., 45.35
- Turner v. Alpha Phi Sorority House, 276 N.W.2d 63 (Minn. 1979)—§ Cat. 20, Intro.
- Tuttle v. Buck, 107 Minn. 145, 119 N.W. 946 (1909)—§ 40.40
- Twist v. Winona & St. P. R. Co., 39 Minn. 164, 39 N.W. 402 (1888)—§ 70.15
- Twitchell v. Nelson, 131 Minn. 375, 155 N.W. 621 (1915)—§§ 40.30, 40.40
- Tysk v. Griggs, 253 Minn. 86, 91 N.W.2d 127 (1958)—§§ Cat. 57, Intro., 57.25

## U

- Unique Systems, Inc. v. Zotos Intern., Inc., 622 F.2d 373, 28 U.C.C. Rep. Serv. 1340 (8th Cir. 1980)—§§ Cat. 20, Intro., 20.46
- United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equipment, LLC, 813 N.W.2d 49 (Minn. 2012)—§ 20.60
- United Wild Rice, Inc. v. Nelson, 313 N.W.2d 628 (Minn. 1982)—§ 40.40
- Urban v. American Legion Dept. of Minnesota, 723 N.W.2d 1 (Minn. 2006)—§§ Cat. 45, Intro., 45.42

## TABLE OF CASES

- Urban v. Minneapolis St. Ry. Co., 256 Minn. 1, 96 N.W.2d 698 (1959)—  
§§ Cat. 25, Intro., Cat. 48, Intro., 48.10
- Urban ex rel. Urban v. American Legion Post 184, 695 N.W.2d 153  
(Minn. Ct. App. 2005)—§ Cat. 45, Intro.
- U.S. v. Cors, 337 U.S. 325, 69 S. Ct. 1086, 93 L. Ed. 1392 (1949)—  
§ 52.35
- U.S. v. Fuller, 409 U.S. 488, 93 S. Ct. 801, 35 L. Ed. 2d 16 (1973)—  
§ 52.35
- U.S. v. Miller, 317 U.S. 369, 63 S. Ct. 276, 87 L. Ed. 336, 147 A.L.R. 55  
(1943)—§ 52.35
- U.S. v. O'Shaughnessy, 517 N.W.2d 574 (Minn. 1994)—§ 23.10
- Utecht v. Shopko Dept. Store, 324 N.W.2d 652 (Minn. 1982)—§§ 50.10,  
50.90

## V

- Vacura v. Haar's Equipment, Inc., 364 N.W.2d 387, 40 U.C.C. Rep.  
Serv. 1493 (Minn. 1985)—§ 30.30
- Valley Farmers' Elevator v. Lindsay Bros. Co., 380 N.W.2d 874 (Minn.  
Ct. App. 1986)—§ 80.75
- Valspar Refinish, Inc. v. Gaylord's, Inc., 764 N.W.2d 359, 68 U.C.C.  
Rep. Serv. 2d 567 (Minn. 2009)—§ 57.20
- Van Asch v. Rutili, 286 Minn. 9, 174 N.W.2d 101 (1970)—§§ Cat. 70,  
Intro., 70.10
- Vanden Broucke v. Lyon County, 301 Minn. 399, 222 N.W.2d 792  
(1974)—§§ 27.15, 27.20
- Vandeputte v. Soderholm, 298 Minn. 505, 216 N.W.2d 144 (1974)—  
§ 57.10
- Vanderweyst v. Langford, 303 Minn. 575, 228 N.W.2d 271 (1975)—  
§ 27.10
- Van Tassel v. Hillerns, 311 Minn. 252, 248 N.W.2d 313 (1976)—§§ Cat.  
65, Intro., 65.10
- VanWagner v. Mattison, 533 N.W.2d 75 (Minn. Ct. App. 1995)—§§ Cat.  
45, Intro., 45.60
- Varco v. Chicago, M. & St. P. Ry. Co., 30 Minn. 18, 13 N.W. 921  
(1882)—§ 92.10
- Vassallo ex rel. Brown v. Majeski, 842 N.W.2d 456 (Minn. 2014)—  
§ 25.40
- Vaughn v. Northwest Airlines, Inc., 558 N.W.2d 736, 20 A.D.D. 796  
(Minn. 1997)—§§ Cat. 25, Intro., Cat. 48, Intro., 48.10
- Venes v. Professional Service Bureau, Inc., 353 N.W.2d 671 (Minn. Ct.  
App. 1984)—§ 60.75
- Venier v. Forbes, 223 Minn. 69, 25 N.W.2d 704 (1946)—§ 23.10
- Ventura v. Titan Sports, Inc., 65 F.3d 725 (8th Cir. 1995)—§ 72.15
- Vermes v. American Dist. Tel. Co., 312 Minn. 33, 251 N.W.2d 101  
(1977)—§ 27.20
- Vernon J. Rockler & Co., Inc. v. Glickman, Isenberg, Lurie & Co., 273  
N.W.2d 647 (Minn. 1978)—§§ Cat. 80, Intro., 80.75
- Vern Reynolds Const., Inc. v. City of Champlin, 539 N.W.2d 614 (Minn.  
Ct. App. 1995)—§§ Cat. 52, Intro., 52.10

- Verrett v. Silver, 309 Minn. 275, 244 N.W.2d 147 (1976)—§ 38.80  
 Vetter v. Security Continental Ins. Co., 567 N.W.2d 516 (Minn. 1997)—  
 §§ Cat. 20, Intro., 20.42  
 Victor v. Sell, 301 Minn. 309, 222 N.W.2d 337 (1974)—§§ Cat. 25,  
 Intro., 60.10, 60.42  
 Victor Co. v. State, 290 Minn. 40, 186 N.W.2d 168 (1971)—§ 52.55  
 Victorson v. Milwaukee & Suburban Transport Co., 70 Wis. 2d 336, 234  
 N.W.2d 332 (1975)—§ 28.92  
 Viking Supply v. National Cart Co., Inc., 310 F.3d 1092, 49 U.C.C. Rep.  
 Serv. 2d 94 (8th Cir. 2002)—§ 20.79  
 Vikse v. Flaby, 316 N.W.2d 276 (Minn. 1982)—§ 57.10  
 Villa Maria, Inc., Matter of, 312 N.W.2d 921 (Minn. 1981)—§ 23.10  
 Vorlander v. Keyes, 1 F.2d 67 (C.C.A. 8th Cir. 1924)—§ 23.10  
 Vosbeck v. Lerdall, 245 Minn. 164, 72 N.W.2d 371 (1955)—§ 85.43  
 Vreeman v. Davis, 348 N.W.2d 756, 38 U.C.C. Rep. Serv. 850 (Minn.  
 1984)—§ 22.70  
 Vue v. State Farm Ins. Companies, 582 N.W.2d 264 (Minn.  
 1998)—§ 32.10

## W

- Wadena v. Bush, 305 Minn. 134, 232 N.W.2d 753, 80 A.L.R.3d 439  
 (1975)—§ 25.12  
 Wagner v. Thomas J. Obert Enterprises, 396 N.W.2d 223 (Minn.  
 1986)—§§ Cat. 28, Intro., 28.30  
 Waits v. United Fire & Cas. Co., 572 N.W.2d 565 (Iowa 1997)—§ 91.41  
 Waldbaum v. Fairchild Publications, Inc., 627 F.2d 1287 (D.C. Cir.  
 1980)—§§ Cat. 50, Intro., 50.40  
 Waldo v. St. Paul City Ry. Co., 244 Minn. 416, 70 N.W.2d 289 (1955)—  
 § 48.10  
 Waldor Pump & Equipment Co. v. Orr-Schelen-Mayeron & Associates,  
 Inc., 386 N.W.2d 375 (Minn. Ct. App. 1986)—§ 80.75  
 Waldstein v. Amann, 259 Minn. 511, 108 N.W.2d 215 (1961)—§ 25.12  
 Walker v. Kennedy, 338 N.W.2d 254 (Minn. 1983)—§ Cat. 45, Intro.  
 Wallin v. Minnesota Dept. of Corrections, 598 N.W.2d 393 (Minn. Ct.  
 App. 1999)—§§ 50.35, 50.94, 50.96  
 Wallinga v. Johnson, 269 Minn. 436, 131 N.W.2d 216 (1964)—§ 75.45  
 Wallstedt v. Swedish Hosp., 220 Minn. 274, 19 N.W.2d 426 (1945)—  
 § 80.43  
 Walstad v. University of Minnesota Hospitals, 442 F.2d 634 (8th Cir.  
 1971)—§ Cat. 80, Intro.  
 Walton v. Fujita Tourist Enterprises Co., Ltd., 380 N.W.2d 198 (Minn.  
 Ct. App. 1986)—§ 30.70  
 Walton v. Jones, 286 N.W.2d 710 (Minn. 1979)—§ Cat. 80, Intro.  
 Wangen v. City of Fountain, 255 N.W.2d 813 (Minn. 1977)—§ 30.10  
 Warner v. E. C. Warner Co., 226 Minn. 565, 33 N.W.2d 721 (1948)—  
 § 23.10  
 Warning v. Kanabec County Co-op. Oil Ass'n, 231 Minn. 293, 42 N.W.2d  
 881 (1950)—§ 70.15  
 Warrick v. Giron, 290 N.W.2d 166 (Minn. 1980)—§§ 25.50, 75.60



## TABLE OF CASES

- Warrick v. Graffiti, Inc., 550 N.W.2d 303 (Minn. Ct. App. 1996)—  
§§ Cat. 20, Intro., 20.41
- Wartnick v. Moss & Barnett, 490 N.W.2d 108 (Minn. 1992)—§§ 27.20,  
Cat. 80, Intro.
- Washburn v. Cutter, 17 Minn. 361, 17 Gil. 335, 1871 WL 3273 (1871)—  
§ 85.80
- Watkins v. Lorenz, 264 Minn. 471, 119 N.W.2d 482 (1963)—§ 57.10
- Watson v. Rheinderknecht, 82 Minn. 235, 84 N.W. 798 (1901)—§ 91.41
- Watson v. United Services Auto. Ass'n, 566 N.W.2d 683 (Minn. 1997)—  
§ Cat. 59, Intro.
- Watson by Hanson v. Metropolitan Transit Com'n, 553 N.W.2d 406  
(Minn. 1996)—§ 25.40
- Watters v. Buckbee Mears Co., 354 N.W.2d 848 (Minn. Ct. App.  
1984)—§§ 85.13, 85.31
- Watts v. Erickson, 244 Minn. 264, 69 N.W.2d 626 (1955)—§ 70.15
- Weatherhead v. Burau, 238 Minn. 134, 55 N.W.2d 703 (1952)—§ 10.45
- Webb v. Berman, 1997 WL 53024 (Minn. Ct. App. 1997)—§ 23.10
- Webb Business Promotions, Inc. v. American Electronics & Entertain-  
ment Corp., 617 N.W.2d 67, 42 U.C.C. Rep. Serv. 2d 534 (Minn.  
2000)—§ 20.81
- Webber v. Seymour, 236 Minn. 10, 51 N.W.2d 825 (1952)—§ 65.30
- Weber v. Au, 512 N.W.2d 348 (Minn. Ct. App. 1994)—§ 45.30
- Wegner v. Milwaukee Mut. Ins. Co., 479 N.W.2d 38, 23 A.L.R.5th 954  
(Minn. 1991)—§§ Cat. 52, Intro., 52.15
- Wegscheider v. Plastics, Inc., 289 N.W.2d 167 (Minn. 1980)—§ 75.45
- Weiby v. Wentz, 264 N.W.2d 624 (Minn. 1978)—§ 25.50
- Weissman v. Sri Lanka Curry House, Inc., 469 N.W.2d 471 (Minn. Ct.  
App. 1991)—§ Cat. 50, Intro.
- Welle v. Prozinski, 258 N.W.2d 912 (Minn. 1977)—§§ 32.10, 32.15
- Wells v. Minneapolis Baseball & Athletic Ass'n, 122 Minn. 327, 142  
N.W. 706 (1913)—§ 91.15
- Welsh v. Barnes-Duluth Shipbuilding Co., 221 Minn. 37, 21 N.W.2d 43  
(1945)—§§ Cat. 20, Intro., 20.40
- Wendinger v. Forst Farms, Inc., 662 N.W.2d 546 (Minn. Ct. App.  
2003)—§§ Cat. 25, Intro., 60.80
- Wenigar v. Johnson, 712 N.W.2d 190 (Minn. Ct. App. 2006)—§ 60.75
- Westbrock v. Marshalltown Mfg. Co., 473 N.W.2d 352 (Minn. Ct. App.  
1991)—§§ Cat. 22, Intro., Cat. 75, Intro., 75.20
- Westerberg v. School Dist. No. 792, Todd County, 276 Minn. 1, 148  
N.W.2d 312 (1967)—§ 75.25
- Western Contracting Corp. v. Dow Chemical Co., 664 F.2d 1097 (8th  
Cir. 1981)—§ 57.10
- Western Insulation Services, Inc. v. Central Nat. Ins. Co. of Omaha,  
460 N.W.2d 355 (Minn. Ct. App. 1990)—§ Cat. 20, Intro.
- Western Sur. and Cas. Co. v. General Elec. Co., 433 N.W.2d 444 (Minn.  
Ct. App. 1988)—§ 75.32
- Westgor v. Grimm, 318 N.W.2d 56 (Minn. 1982)—§ 23.10
- Westland Capital Corp. v. Lucht Engineering Inc., 308 N.W.2d 709  
(Minn. 1981)—§ 23.10

- Westphal v. Anderson, 347 N.W.2d 85 (Minn. Ct. App. 1984)—§ Cat. 20, Intro.
- Wexler v. Brothers Entertainment Group, Inc., 457 N.W.2d 218 (Minn. Ct. App. 1990)—§ 57.40
- W.G.O. ex rel. Guardian of A.W.O. v. Crandall, 640 N.W.2d 344 (Minn. 2002)—§ 25.16
- Whelan v. Gould, 259 Minn. 203, 106 N.W.2d 893 (1960)—§ 25.55
- White v. Boucher, 322 N.W.2d 560, 34 A.L.R.4th 179 (Minn. 1982)—§ 23.10
- White v. Lunder, 66 Wis. 2d 563, 225 N.W.2d 442 (1975)—§ 28.92
- White v. Many Rivers West Ltd. Partnership, 797 N.W.2d 739 (Minn. Ct. App. 2011)—§§ 85.40, 85.43, 85.46
- Whiteford by Whiteford v. Yamaha Motor Corp., U.S.A., 582 N.W.2d 916 (Minn. 1998)—§§ Cat. 25, Intro., 25.10, 75.20, 85.25
- White Stone Partners, LP v. Piper Jaffray Companies, Inc., 978 F. Supp. 878 (D. Minn. 1997)—§ 20.55
- Whittaker v. Stangvick, 100 Minn. 386, 111 N.W. 295 (1907)—§ 85.10
- Wicken v. Morris, 527 N.W.2d 95 (Minn. 1995)—§ 55.34
- Wiederholt v. City of Minneapolis, 581 N.W.2d 312 (Minn. 1998)—§ 25.40
- Wiertzema v. Westfield Industries, Ltd., 1989 WL 117580 (Minn. Ct. App. 1989)—§ 25.12
- Wilcox v. Mutual Fire Ins. Co. of Minnesota, 81 Minn. 478, 84 N.W. 334 (1900)—§ 59.10
- Wild v. Rarig, 302 Minn. 419, 234 N.W.2d 775 (1975)—§§ 40.30, 40.35, 55.35
- Willard v. St. Paul City Ry. Co., 116 Minn. 183, 133 N.W. 465 (1911)—§§ Cat. 48, Intro., 48.40
- Willetts v. Seerup, 151 Minn. 105, 186 N.W. 225 (1922)—§ 10.20
- Williams v. John A. Stees Co., 172 Minn. 35, 214 N.W. 671 (1927)—§ 85.60
- Williams v. Smith, 820 N.W.2d 807, 284 Ed. Law Rep. 508 (Minn. 2012)—§ 57.20
- Williams v. St. Paul Ramsey Medical Center, Inc., 551 N.W.2d 483 (Minn. 1996)—§ 55.65
- Williams v. Tweed, 520 N.W.2d 515 (Minn. Ct. App. 1994)—§§ 25.37, 57.20
- Williams v. Wadsworth, 503 N.W.2d 120 (Minn. 1993)—§§ 12.30, 80.25
- Williamson v. Prasciunas, 661 N.W.2d 645 (Minn. Ct. App. 2003)—§ 60.65
- Willis v. Indiana Harbor Steamship Co., L.L.C., 790 N.W.2d 177 (Minn. Ct. App. 2010)—§ 12.35
- Willmar Poultry Co. v. Carus Chemical Co., 378 N.W.2d 830 (Minn. Ct. App. 1985)—§§ Cat. 75, Intro., 75.25
- Wilmes v. Mihelich, 223 Minn. 139, 25 N.W.2d 833 (1947)—§ 65.10
- Wilson v. Harris Corp., 1993 WL 724813 (D. Minn. 1993)—§ 75.25
- Wilson v. Hayes, 40 Minn. 531, 42 N.W. 467 (1889)—§§ Cat. 20, Intro., 20.41
- Wilson v. Northern Pac. R. Co., 26 Minn. 278, 3 N.W. 333 (1879)—§ 25.16

## TABLE OF CASES

- Wilson v. Piper Aircraft Corp., 282 Or. 61, 577 P.2d 1322, 97 A.L.R.3d 606 (1978)—§ 75.20
- Wilson v. Ramacher, 352 N.W.2d 389 (Minn. 1984)—§§ Cat. 52, Intro., 52.10
- Wilson v. Weight Watchers of Upper Midwest, Inc., 474 N.W.2d 380 (Minn. Ct. App. 1991)—§§ Cat. 50, Intro., 50.30, 50.90
- Wiltse v. City of Red Wing, 99 Minn. 255, 109 N.W. 114 (1906)—§ 85.55
- Wineman v. Carter, 212 Minn. 298, 4 N.W.2d 83 (1942)—§ 28.92
- Winget v. Rockwood, 69 F.2d 326 (C.C.A. 8th Cir. 1934)—§ 20.77
- Winter v. Skoglund, 404 N.W.2d 786 (Minn. 1987)—§ 20.76
- Winthrop and Weinstine, P.A. v. Travelers Cas. and Sur. Co., 187 F.3d 871, 39 U.C.C. Rep. Serv. 2d 810 (8th Cir. 1999)—§ 59.15
- Wirig v. Kinney Shoe Corp., 461 N.W.2d 374 (Minn. 1990)—§ 50.30
- Wise v. Midtown Motors, 231 Minn. 46, 42 N.W.2d 404, 20 A.L.R.2d 735 (1950)—§ 20.77
- W.K.T. Distributing Co. v. Sharp Electronics Corp., 746 F.2d 1333 (8th Cir. 1984)—§ 23.10
- Wm. Weisman Realty Co. v. Cohen, 157 Minn. 161, 195 N.W. 898 (1923)—§§ Cat. 20, Intro., 20.15, 20.35, 20.40
- Woida v. North Star Mut. Ins. Co., 306 N.W.2d 570 (Minn. 1981)—§ 59.30
- Wojahn v. Johnson, 297 N.W.2d 298 (Minn. 1980)—§ 85.80
- Wolfson v. Northern States Management Co., 210 Minn. 504, 299 N.W. 676 (1941)—§ 40.40
- Wolpert v. Foster, 312 Minn. 526, 254 N.W.2d 348, 21 U.C.C. Rep. Serv. 516, 90 A.L.R.3d 1132 (1977)—§§ Cat. 20, Intro., 20.41
- Wolston v. Reader's Digest Ass'n, Inc., 443 U.S. 157, 99 S. Ct. 2701, 61 L. Ed. 2d 450 (1979)—§ Cat. 50, Intro.
- Wong v. American Family Mut. Ins. Co., 576 N.W.2d 742 (Minn. 1998)—§ 55.34
- Wood v. Prudential Ins. Co. of America, 212 Minn. 551, 4 N.W.2d 617 (1942)—§§ Cat. 85, Intro., 85.40, 85.49
- Woody v. Krueger, 374 N.W.2d 822 (Minn. Ct. App. 1985)—§ Cat. 50, Intro.
- Worden v. Gangelhoff, 308 Minn. 252, 241 N.W.2d 650 (1976)—§§ Cat. 75, Intro., 75.92
- Wormsbecker v. Donovan Const. Co., 251 Minn. 277, 87 N.W.2d 660 (1958)—§ 30.50
- Wormsbecker v. Donovan Const. Co., 247 Minn. 32, 76 N.W.2d 643 (1956)—§§ Cat. 20, Intro., 20.46, 20.56
- Wright v. Engelbert, 193 Minn. 509, 259 N.W. 75 (1935)—§ 91.75
- Wright v. Minneapolis St. Ry. Co., 222 Minn. 105, 23 N.W.2d 347 (1946)—§ 65.30
- Wright v. Wright, 311 N.W.2d 484 (Minn. 1981)—§ 23.10
- Wyman v. Northern Pac. R. Co., 34 Minn. 210, 25 N.W. 349 (1885)—§ 48.15
- Wynkoop v. Carpenter, 574 N.W.2d 422 (Minn. 1998)—§ 91.75



**Y**

- Yates v. Hanna Min. Co., Inc., 365 N.W.2d 783 (Minn. Ct. App. 1985)—  
§ 55.31
- Yath v. Fairview Clinics, N.P., 767 N.W.2d 34, 54 A.L.R.6th 699 (Minn.  
Ct. App. 2009)—§§ 30.20, 72.20
- Ybarra v. Spangard, 25 Cal. 2d 486, 154 P.2d 687, 162 A.L.R. 1258  
(1944)—§ 25.50
- Young v. Blandin, 215 Minn. 111, 9 N.W.2d 313 (1943)—§ 23.10
- Young v. Caspers, 311 Minn. 391, 249 N.W.2d 713 (1977)—§§ 25.50,  
25.52
- Young v. Grieb, 95 Minn. 396, 104 N.W. 131 (1905)—§ 85.80
- Young v. St. Paul City Ry. Co., 142 Minn. 10, 170 N.W. 845 (1919)—  
§§ Cat. 48, Intro., 48.35
- Young v. Wlazik, 262 N.W.2d 300 (Minn. 1977)—§ 65.20
- Yunker v. Honeywell, Inc., 496 N.W.2d 419 (Minn. Ct. App. 1993)—  
§§ 30.91, 30.92, 55.20, 55.30
- Yurkew v. Taylor, 252 Minn. 277, 89 N.W.2d 723 (1958)—§ 65.35

**Z**

- Zaske ex rel. Bratsch v. Lee, 651 N.W.2d 527 (Minn. Ct. App. 2002)—  
§ 12.10
- Zeman v. City of Minneapolis, 552 N.W.2d 548 (Minn. 1996)—§§ Cat.  
52, Intro., 52.15
- Zerby v. Warren, 297 Minn. 134, 210 N.W.2d 58 (1973)—§§ 25.45, Cat.  
28, Intro., 28.15
- Zickrick v. Strathern, 211 Minn. 329, 1 N.W.2d 134 (1941)—§ 25.16
- Ziegler v. Leo A. Hoffmann Center, Inc., 397 N.W.2d 378 (Minn. Ct.  
App. 1986)—§ 55.35
- Zimmer, Petition of, 359 N.W.2d 266 (Minn. 1984)—§ 52.80
- Zitzow v. Wal-Mart Stores, Inc., 568 N.W.2d 549 (Minn. Ct. App.  
1997)—§ 25.50
- Zobel & Dahl Const. v. Crotty, 356 N.W.2d 42 (Minn. 1984)—§§ 20.56,  
59.35
- Zorgdrager v. State Wide Sales, Inc., 489 N.W.2d 281 (Minn. Ct. App.  
1992)—§ Cat. 25, Intro.
- Zuber v. Northern Pac. Ry. Co., 246 Minn. 157, 74 N.W.2d 641 (1956)—  
§ 28.25
- Zutz v. Case Corp., 422 F.3d 764 (8th Cir. 2005)—§§ 25.37, 57.20
- Zutz v. Nelson, 788 N.W.2d 58 (Minn. 2010)—§§ Cat. 50, Intro., 50.30

# Index

## **ABNORMALLY DANGEROUS ACTIVITIES**

Landlord and tenant, **85.55**

## **ABSENT PARTIES**

Multiple parties, **15.40**

## **ABSOLUTE LIABILITY**

Animals, injuries caused by, **38.90**

## **ABUTTING OWNERS**

Ditch, benefits to adjoining landowners, **52.80**

Sidewalks, duty of owner of abutting property, **85.60**

## **ACCEPTANCE**

Contract, **20.20**

## **ACCESS**

Eminent domain, **52.45**

## **ACCESS RIGHTS**

Eminent domain, **52.45**

## **ACCIDENT**

Negligence, fact of accident alone, no inference of negligence, **25.55**

Special verdict forms, warranties, **22.90**

Warranties, **22.90**

## **ACCORD AND SATISFACTION**

Contracts, **20.81**

Defenses, **20.81**

## **ACCOUNTANT, PUBLIC**

Malpractice, **80.75**

## **ACTING PEACEABLY**

Proximate cause, injuries caused by animals, **38.50**

## **ACTUAL KNOWLEDGE**

Sidewalk or street defect, knowledge of municipality, **85.65**

## **ADVERSE POSSESSION**

Duties of property owners, **85.80**

## **AGENCY**

Agent and principal, punitive damages, **94.92**

Insurance agent defined, **59.40**

Punitive damages, agent and principal, **94.92**

Special verdict form, punitive damages, agent and principal, **94.92**

**AGENCY—Cont'd**

Vicarious liability, **30.25, 30.30**

**ALCOHOLIC BEVERAGES**

Civil Damage Act, this index

**ANIMALS**

Absolute liability, **38.90**

Common law strict liability for injuries caused by, **38.93**

Defenses, domestic animals, **38.20**

Domestic animals

Defenses, **38.20**

Scienter, **38.10, 38.20, 38.93**

Injuries caused by

Absolute liability, **38.90**

Common law strict liability, **38.93**

Keeping or harboring, **38.80**

Multiple parties, **38.92**

Negligence, **38.70**

Proximate cause, **38.30 et seq.**

Injury caused by, **38.10 et seq.**

Proximate cause

Generally, **38.30, 38.60**

Acting peaceably, **38.50**

Provocation, **38.40**

Scienter

Defenses, **38.20**

Domestic animals, **38.10, 38.20, 38.93**

Negligence, **38.93**

**ANTICIPATORY BREACH**

Contract, **20.46**

**APPROPRIATION**

Invasion of privacy, **72.15**

Special verdict form, invasion of privacy, **72.91**

**ARCHITECTS AND ARCHITECTURE**

Malpractice, **80.75**

**ARTICLES AND TEXTBOOKS**

Evidentiary instructions, **12.40**

**ASSAULT AND BATTERY**

Generally, **60.20**

Battery, **60.25**

Common carrier, passenger safety from, **48.35**

Special verdict forms, **60.91, 60.92**

**ASSUMPTION OF RISK**

Primary, **28.30**

Secondary, **28.25**



## INDEX

### ASSUMPTIONS

Good conduct of another, right to assume, **25.12**

Risk

Primary, **28.30**

Secondary, **28.25**

### ATTORNEY-CLIENT RELATIONSHIP

Legal malpractice, **80.61, 80.64**

### ATTORNEYS

Legal malpractice

Generally, **80.55**

Attorney-client relationship, **80.61, 80.64**

Case-in-a-case, special verdict form, **80.97**

Causation, **80.66**

Contract, **80.61, 80.64**

Specialists, **80.58**

Special verdict form, **80.97, 80.98**

Transactional, special verdict form, **80.98**

Professional malpractice, **80.55 et seq.**

### AUTOMOBILES AND HIGHWAY TRAFFIC

Generally, **65.10 et seq.**

Common law duties, **65.10**

Driver, **65.10**

Insurance law and practice

Misrepresentation, application for insurance, **59.90**

Special verdict forms

Misrepresentation, application for insurance, **59.90**

No-fault auto insurance, **65.90**

Underinsured motorist insurance, **65.91**

Uninsured motorist insurance, **65.92**

Tort thresholds for no-fault automobile insurance, **65.40**

Negligence, **65.10**

No-fault automobile insurance

Special verdict forms, **65.90**

Tort thresholds, **65.40**

Owner, imputed fault of, **32.10 et seq.**

Passenger

Generally, **65.15**

Affirmative duty, **65.20**

Duty, generally, **65.15**

Pedestrian, **65.10**

Reasonable care, duty of child, **70.20**

Skidding alone, **65.35**

Special verdict forms

No-fault insurance, **65.90**

Underinsured motorist insurance, **65.91**

Uninsured motorist insurance, **65.92**

**AUTOMOBILES AND HIGHWAY TRAFFIC—Cont'd**

Traffic statutes

Generally, **65.30**

Violation of, **65.25**

Underinsured motorist insurance, special verdict forms, **65.91**

Uninsured motorist insurance, special verdict forms, **65.92**

**AVIATION**

Reasonable care, duty of child, **70.20**

**AWARDS**

Commissioner's award in eminent domain, **52.20**

Damages, this index

**BAILMENTS**

Products liability, **75.45**

**BATTERY**

Intentional torts, **60.25**

Special verdict forms, **60.92**

**BOATS AND BOATING**

Reasonable care, duty of child, **70.20**

**BREACH**

Anticipatory breach, **20.46**

Contract, **20.45, 20.46**

Covenant to repair leased premises, negligent breach, **85.46**

Warranty, **22.50 et seq.**

**BROKERS**

Insurance broker defined, **59.40**

**BUILDING CODE**

Leased premises, violations, **85.50**

**BURDEN OF PROOF**

Generally, **14.15**

**BUSINESS ENTITIES**

Vicarious liability, **30.10 et seq.**

**BUSINESS OF SELLING OR LEASING**

Products liability, generally, **75.10**

**BUSINESS ORGANIZATIONS**

Generally, **40.10**

Defamation, **40.10**

**BUSINESS TORTS**

Contractual relationships, interference with

Generally, **40.30**

Damages, **40.45**

Defamation, business organizations, **40.10**

## **INDEX**

### **BUSINESS TORTS—Cont'd**

- Justification, **40.40**
- Product disparagement, **40.15**
- Prospective economic advantage, interference with, **40.35**
- Trade secret
  - Generally, **40.20**
  - Misappropriation, **40.25**

### **CAUSATION**

- Generally, **27.10 et seq.**
- Attorney malpractice, **80.66**
- Civil Damage Act, **45.30**
- Direct, **27.10**
- Legal malpractice, **80.66**
- Products liability, **75.50**
- Warranty, **22.65**

### **CHILDREN AND MINORS**

- Civil Damage Act, **45.10 et seq.**
- Personal damages, **91.55 et seq.**
- Punishment by teacher or person other than parent, **70.35**
- Reasonable care, duty of child
  - Generally, **70.15**
  - Operation of automobile, airplane, or powerboat, **70.20**
- Safety of, **70.10**
- Torts of children, parental liability for
  - Negligent entrustment, **70.30**
  - Specific propensity, **70.25**
- Trespassing, **85.19**

### **CIRCUMSTANTIAL EVIDENCE**

- Generally, **12.10**
- Products liability, proof of defect, **75.32**

### **CIVIL DAMAGE ACT**

- Alcoholic beverage, defined, **45.20**
- Contribution to intoxication by plaintiff, **45.35**
- Damages
  - Bodily injury, **45.55**
  - Injury to minor, **45.50**
  - Means of support, **45.45**
  - Pecuniary loss, **45.45**
- Defense, **45.40**
- Employer's responsibility for employee conduct, sale of alcoholic beverages, **45.42**
- Good faith and reasonable reliance on proof of age, **45.40**
- Illegal sale
  - Generally, **45.10**
  - Causation, **45.30**
  - Obviously intoxicated person, **45.15**



**CIVIL DAMAGE ACT—Cont'd**

Intoxication

Generally, **45.25**

Contribution to by plaintiff, **45.35**

Definition, **45.25**

Person under 21, **45.62**

Sale of alcoholic beverages, generally, **45.42**

Social host liability, **45.60**

Special verdict forms

Civil damage act liability, **45.90**

Common law social host liability, **45.93 to 45.96**

Complicity, **45.93**

Injury or death, **45.91**

Statutory social host liability, **45.92, 45.94, 45.96**

Third person, host liability to, **45.95, 45.96**

**COMMISSIONERS**

Commissioner's award, eminent domain, **52.20**

**COMMON CARRIERS**

Generally, **48.10 et seq.**

Definition of passenger, **48.15**

Passengers

Duty to protect passenger safety

Generally, **48.15**

Assault or intentional harm by employees, **48.35**

Injury by third persons, **48.25**

Injury from other passengers, **48.30**

Stations, **48.20**

Right of carrier to eject, **48.40**

Railroad crossing, **48.45**

**COMMON LAW**

Animals, injuries caused by, **38.93**

Automobiles and highway traffic, **65.10**

Defamation, actual malice, **50.35**

Motor vehicles, **65.10**

**COMPARATIVE FAULT**

Generally, **28.15**

Negligence, **28.15**

Special verdict forms, **28.91 to 28.93**

**COMPARATIVE NEGLIGENCE**

Special verdict forms, **28.90**

**COMPROMISE AND SETTLEMENT**

Settlement agreements, **15.35**

**CONCURRING CAUSE**

Generally, **27.15**

## INDEX

### **CONCURRING CAUSE—Cont'd**

Negligence, **27.15**

### **CONDUCT**

Assumption of good conduct of another, right as to, **25.12**

Civil Damage Act, employer's responsibility for employee conduct, sale of alcoholic beverages, **45.42**

Corporations, vicarious liability for conduct of employees, **30.60**

Employee

Civil Damage Act, employer's responsibility for employee conduct, sale of alcoholic beverages, **45.42**

Corporations, vicarious liability for conduct of employees, **30.60**

Good conduct of another, right to assume, **25.12**

Reckless conduct, **25.37**

Willful conduct, **25.40**

### **CONSENT OR APPROVAL**

Intentional torts, **60.15**

Medical malpractice

Generally, **80.22**

Informed consent, **80.25**

Special verdict form, **80.92**

Treatment/operation, **80.22**

Motor vehicle owner, **32.15 et seq.**

### **CONSIDERATION**

Contract offer, **20.40**

Employment contract, **55.45**

### **CONSTRUCTIVE KNOWLEDGE**

Sidewalk or street defect, knowledge of municipality, **85.65**

### **CONSUMER FRAUD**

Generally, **57.40**

Special verdict form, **57.92**

### **CONTRACTS**

Generally, **20.10 et seq.**

Acceptance, **20.20**

Accord and satisfaction, **20.81**

Attorney-client relationship, **80.61, 80.64**

Breach of contract

Generally, **20.45**

Anticipatory breach, **20.46**

Damages, employment claims, **55.60**

Employment contract, **55.60**

Special verdict form, **20.90**

Consideration of offer, **20.40**

Contractual relationship, interference with, **40.30 et seq.**

Counteroffer, **20.25**

**CONTRACTS—Cont'd**

Damages

Generally, **20.60**

Interference with contractual relationships, **40.45**

Mitigation of, **20.65**

Defenses

Accord and satisfaction, **20.81**

Duress, **20.77**

Frustration, **20.79**

Hindrance of performance, **20.56**

Impossibility, **20.80**

Mutual mistake of fact, **20.76**

Undue hardship, **20.80**

Unilateral mistake of fact, **20.75**

Duress, **20.77**

Duty of good faith and fair dealing, **20.55**

Elements, **20.10**

Employment claims

Generally, **55.35 et seq.**

Acceptance of employment contract, **55.40**

Breach of employment contract, **55.60**

Consideration of employment contract, **55.45**

Handbooks, **55.35**

Manuals, **55.35**

Fair dealing, duty of, **20.55**

Frustration, **20.79**

Good faith and fair dealing, duty of, **20.55**

Hindrance of performance, **20.56**

Impossibility, **20.80**

Mistake of fact

Mutual, **20.76**

Unilateral, **20.75**

Mitigation of damages, **20.65**

Modification, **20.41**

Mutual mistake of fact, **20.76**

Novation, **20.42**

Offer

Generally, **20.15 et seq.**

Acceptance, **20.20**

Consideration, **20.40**

Counteroffer, **20.25**

Rejection, **20.30**

Revocation, **20.35**

Promissory estoppel, **20.50**

Rejection of offer, **20.30**

Revocation of offer, **20.35**

Undue hardship, **20.80**



## INDEX

### CONTRACTS—Cont'd

Unilateral mistake of fact, **20.75**

### CONTRIBUTION

Civil Damage Act, plaintiff's contribution to intoxication, **45.35**

### CONVERSION

Generally, **60.65**

Intentional torts, **60.65**

Personal property, **60.65**

Special verdict forms, **60.93**

### CORPORATIONS

Generally, **30.60**

Conduct of employees, vicarious liability, **30.60**

Defamation, **40.10**

Vicarious liability, **30.60**

### COUNTEROFFER

Contracts, **20.25**

### CUSTOM

Evidence of custom, **25.47**

Fault and culpability, **25.47**

Negligence, **25.47**

### DAMAGES

Adjustment for cash value, compensatory damages, **90.25**

Apportionment of, **15.20**

Bodily and mental harm, personal damages

Future, **91.25**

Past, **91.10**

Burden of proof, **90.15**

Compensatory

Generally, **90.10 et seq.**

Adjustment for cash value, **90.25**

Cash value, adjustment for, **90.25**

General instructions, **90.20**

Taxation of, **90.30**

Contract

Generally, **20.60**

Interference with contractual relationships, **40.45**

Mitigation of, **20.65**

Defamation

Actual, **50.55**

Presumed, **50.50**

Punitive, **50.65**

Special, **50.60**

Special verdict forms, **50.90 to 50.92, 50.97**

Defense of persons or property, excessive force or restraint, **60.57**

Earning capacity, future loss as personal damages, **91.35**

**DAMAGES—Cont'd**

- Earnings, loss of
  - Mitigation, **91.47**
  - Past loss of as personal damages, **91.20**
- Fraud and misrepresentation, **57.25**
- Future, **90.25 et seq.**
- Hospital and medical supplies, personal damages
  - Future, **91.30**
  - Past, **91.15**
- Life expectancy tables, **91.85**
- Means of support and pecuniary loss, combined instruction, **45.45**
- Medical expenses, personal damages
  - Future, **91.30**
  - Past, **91.15**
- Mitigation
  - Contracts, **20.65**
  - Person, **91.45**
  - Property, **92.15**
- Personal
  - Generally, **90.10 et seq.**
  - Aggravation, **91.40**
  - Bodily and mental harm
    - Future, **91.25**
    - Past, **91.10**
  - Children
    - Emancipation of minor, **91.70**
    - Future medical expenses, **91.65**
    - Loss of future earning capacity, **91.60**
  - Earning capacity, loss of
    - Child's future earning capacity, **91.60**
    - Future damages, **91.35, 91.60**
  - Earnings, loss of, **91.20**
  - Eggshell plaintiff doctrine, **91.41**
  - Future
    - Bodily and mental harm, **91.25**
    - Earning capacity, loss of, **91.35, 91.60**
    - Hospital and medical supplies, **91.30**
    - Medical expenses, **91.30**
  - Hospital and medical supplies
    - Child, future expenses, **91.65**
    - Future, **91.30**
  - Injury to spouse, **91.50**
  - Medical expenses
    - Child, future medical expenses, **91.65**
    - Future, **91.30**
    - Past, **91.15**

## INDEX

### DAMAGES—Cont'd

#### Personal—Cont'd

##### Mitigation of damages

Loss of earnings, **91.47**

Person, **91.45**

Parent's for injury to child, **91.55**

#### Past

Bodily and mental harm, **91.10**

Earnings, loss of, **91.20**

Hospital and medical supplies, **91.15**

Medical expenses, **91.15**

#### Pre-existing condition

Aggravation, **91.40**

Eggshell plaintiff doctrine, **91.41**

Wrongful death, **91.75**

#### Pre-existing condition

Aggravation, **91.40**

Eggshell plaintiff doctrine, **91.41**

Present cash value, **90.25**

#### Property

Generally, **90.10 et seq.**

Elements, **92.10**

Mitigation of, **92.15**

Punitive Damages, this index

Severance Damages, this index

Taxation of damages, **90.30**

#### Warranty

Generally, **22.70**

Special verdict forms, **22.92**

### DEATH AND DEATH ACTIONS

Damages, **91.47**

Earnings, loss of, **91.47**

Measure of wrongful death damages, **91.75**

Medical malpractice, loss of chance of more favorable outcome, **80.95, 80.96**

Mitigation of damages, **91.47**

Special verdict forms

Medical malpractice, loss of chance of more favorable outcome, **80.95, 80.96**

Negligence, **28.93**

### DECEPTIVE TRADE PRACTICE

Product disparagement, **40.15**

### DEFAMATION

Absolute privilege, **50.30**

Business organizations, **40.10**

Damages

Actual, **50.55**

Presumed, **50.50**



**DEFAMATION—Cont'd**

- Damages—Cont'd
  - Punitive, **50.65**
  - Special, **50.60**
- Defamatory communication
  - Generally, **50.10**
  - Publication, **50.15**
- Negligence, standard for, **50.45**
- Qualified privilege
  - Generally, **50.30**
  - Actual malice
    - Common law standard, **50.35**
    - Constitutional standard, **50.40**
  - Special verdict forms, **50.94, 50.96**
- Slander per se, **50.20**
- Special verdict forms
  - Damages, **50.97**
  - Libel, **50.90**
  - Qualified privilege, **50.94, 50.96**
  - Slander, **50.91, 50.92**
- Truth, defining, **50.25**

**DEFECTS**

- Circumstantial evidence, proof of defect, **75.32**
- Component parts manufacturing, liability, **75.96**
- Design, special verdict form, **75.90, 75.94, 75.96, 75.98**
- Manufacturing
  - Products liability, **75.30**
  - Special verdict form, **75.92**
- Products liability, **75.15 et seq.**
- Seller's liability, design defect, special verdict form, **75.94**
- Sidewalks
  - Duty of municipality, **85.63**
  - Knowledge of municipality of defect, **85.65**
- Streets
  - Duty of municipality, **85.63**
  - Knowledge of municipality of defect, **85.65**

**DEFENSE**

- Dwelling, **60.39 et seq.**
- Persons, **60.30 et seq.**
- Property, **60.45 et seq.**

**DEFENSE OF PERSONS OR PROPERTY**

- Generally, **60.30 et seq.**
- Deadly force, use of, **60.60**
- Dwelling
  - Generally, **60.39**
  - Trespass, **60.42**

## INDEX

### DEFENSE OF PERSONS OR PROPERTY—Cont'd

Excessive force or restraint, damages, **60.57**

Peace officer's use of deadly force, **60.60**

Retaking by force

Generally, **60.51**

Amount of force justified, **60.54**

Special verdict forms, **60.92**

Third persons, defense of, **60.36**

Third person's property, **60.48**

### DEFENSES

Accord and satisfaction, **20.81**

Civil Damage Act, **45.40**

Contracts, this index

Domestic animals, injuries caused by, **38.20**

Duress, **20.77**

Frustration, **20.79**

Hindrance of performance of contract, **20.56**

Impossibility, **20.80**

Mutual mistake of fact, **20.76**

Performance of contract, hindrance, **20.56**

Scienter, injuries caused by domestic animals, **38.20**

Undue hardship, **20.80**

Unilateral mistake of fact, **20.75**

### DEFINITIONS

Alcoholic beverage, **45.20**

Assault, **60.20**

Battery, **60.25**

Civil assault, **60.20**

Compensatory damages, **90.10**

Employee, **30.10**

Entrant, **85.22**

False imprisonment, **60.70**

Independent contractor, **30.10**

Insurance agent and broker, **59.40**

Intent, **60.10**

Intoxication, **45.25**

Joint venture, **30.70**

Negligence, **25.10**

Partners, **30.50**

Passenger, **48.15**

Private nuisance, **60.80**

Reasonable care, **25.10**

Reckless, **25.37**

Scope of authority, **30.55**

Severance damages, **52.55**

Severance damages to noncontiguous property, **52.60**

**DEFINITIONS—Cont'd**

- Total taking, **52.35**
- Trade secret, **40.20**
- Traffic statutes, terms, **65.30**
- Trespass, **85.10**

**DENTISTS AND DENTISTRY**

- Medical malpractice, **80.10**

**DEPOSITION**

- Evaluation of evidence, **12.20**

**DESIGN DEFECTS**

- Products liability, **75.20**
- Special verdict form, **75.90, 75.94, 75.96, 75.98**

**DIRECT CAUSE**

- Generally, **27.10**
- Negligence, **27.10**

**DIRECTED VERDICT**

- Generally, **15.30**

**DIRECT EVIDENCE**

- Generally, **12.10**

**DISCLOSURE**

- Fraud and deceit, duty to disclose material facts, **57.30**
- Medical malpractice, negligent nondisclosure, **80.25**
- Privacy, public disclosure of private facts, **72.20, 72.92**
- Special verdict form, public disclosure of private facts, **72.92**

**DISPARAGEMENT**

- Business torts, **40.15**

**DITCHES**

- Eminent domain, **52.80**

**DOCTORS**

- Medical Malpractice, this index

**DURESS**

- Contracts, **20.77**
- Defenses, **20.77**

**DUTY OF FIDUCIARY**

- Generally, **23.10**

**DUTY OF JUDGE AND JURY**

- Post-trial preliminary statement, **10.20**

**DUTY OF POSSESSOR AND ENTRANT**

- Privately owned property, generally, **85.25**



## INDEX

### DUTY OF POSSESSOR TO TRESPASSER

- Activities of owner or occupant, **85.16**
- Condition of premises, **85.13**

### DUTY TO WARN

- Products liability, **75.25**

### EMANCIPATION OF MINOR

- Damages, **91.70**

### EMERGENCY RULE

- Fault and culpability, **25.16**
- Negligence, **25.16**

### EMINENT DOMAIN

- Generally, **52.10 et seq.**
- Access rights, taking of
  - Generally, **52.45**
  - Damages, **52.50**
- Burden of proof, **52.30**
- Commissioner's award, **52.20**
- Definitions
  - Severance damages to noncontiguous property, **52.60**
  - Total taking, **52.35**
- Ditch, benefits to adjoining landowners, **52.80**
- Fair market value, **52.40**
- Just compensation, **52.35 et seq.**
- Leaseholds, **52.75**
- Non-contiguous tracts, **52.91**
- Severance damages
  - Generally, **52.55**
  - Definition, **52.55**
  - Noncontiguous property, **52.60**
  - Partial taking, **52.65**
- Special verdict forms
  - Noncontiguous property, **52.91**
  - Owner and tenant, **52.92**
  - Severance damages, **52.90**
- Taking
  - Generally, **52.15**
  - Partial
    - Damages, **52.65**
    - Separate verdicts, **52.70**
  - Total, **52.35**
- View of premises, **52.25**

### EMOTIONAL CONDITION

- Distress, **60.75**
- Special verdict forms, **60.90**

**EMOTIONAL DISTRESS, INTENTIONAL INFLICTION OF**

Generally, **60.75**

Special verdict form, **60.90**

**EMPLOYER LIABILITY**

Generally, **55.10 et seq.**

**EMPLOYMENT**

Assault exception, **55.33**

Claims

Generally, **55.10 et seq.**

Employment contracts

Acceptance, **55.40**

Consideration, **55.45**

Damages for breach of, **55.60**

Handbooks or manuals, **55.35**

Good faith, **55.66**

Negligence

Gross negligence, **55.34**

Hiring, **55.20, 55.91**

Retention, **55.30, 55.91**

Supervision, **55.25, 55.91**

Penalties, **55.68**

Report, **55.67**

Special verdict forms

Assault exception, **55.93**

Intent, conscious and deliberate intent to cause injury, **55.92**

Negligent hiring, retention, or supervision, **55.91**

Safe place to work, employer's duty to provide, **55.90**

Whistleblowers, **55.94**

Termination

Condonation, **55.55**

Good cause, **55.50**

Violation of public policy, **55.65**

Tort claims

Assault exception, **55.33, 55.93**

Intent, conscious and deliberate intent to cause injury, **55.32, 55.92**

Safe place to work, employer's duty to provide, **55.31, 55.90**

Whistleblowers, **55.65, 55.94**

Conduct of employees, vicarious liability of corporation, **30.60**

Employment claims, **55.20 et seq.**

Gross negligence, tort claims, **55.34**

Intent, conscious and deliberate intent to cause injury, tort claims, **55.32**

Negligent hiring, **55.20**

Special verdict forms, **30.91**

Negligent retention, special verdict forms, **30.91**

Penalties, **55.68**

Personal injury claims, **55.10 et seq.**

## INDEX

### **EMPLOYMENT—Cont'd**

- Punitive damages, **94.15**
- Safe place to work, employer's duty to provide
  - Special verdict forms, **55.90**
- Tort claims, **55.31**
- Scope of employment, vicarious liability, special verdict forms, **30.90 to 30.92**
- Special verdict forms
  - Negligent hiring or retention, **30.91**
  - Safe place to work, employer's duty to provide, **55.90**
  - Vicarious liability, **30.90 to 30.92**
- Termination claims
  - Condonation, **55.55**
  - Good cause, **55.50**
  - Violation of public policy, **55.65**
- Vicarious liability, **30.10 et seq.**
  - Special verdict forms, **30.91**
- Whistleblowers, **55.65, 55.94**

### **ENGINEERS AND ENGINEERING**

- Malpractice, **80.75**

### **ESTOPPEL**

- Contracts, promissory estoppel, **20.50**
- Promissory estoppel, **20.50**

### **EVIDENCE AND WITNESSES**

- Eminent domain, view of premises, **52.25**
- Evidentiary instructions, **12.10 et seq.**

### **EXPERT TESTIMONY**

- Generally, **12.30**

### **FAIR DEALING**

- Contract, **20.55**

### **FAIR MARKET VALUE**

- Eminent domain, **52.40**

### **FALSE IMPRISONMENT**

- Generally, **60.70**
- Definition, **60.70**
- Intentional torts, **60.70**
- Jury instructions, **60.70**
- Special verdict form, **60.94**

### **FIDUCIARY DUTY**

- Generally, **23.10**

### **FOOD**

- Products liability, **75.60**

### **FORCE OR VIOLENCE**

- Damages, excessive force or restraint, **60.57**



**FORCE OR VIOLENCE—Cont'd**

- Deadly, use by peace officer, **60.60**
- Excessive force or restraint, damages, **60.57**
- Reasonable force, **60.63**
- Retaking of property by
  - Generally, **60.51**
  - Amount justified, **60.54**
- Self defense, threatening force, **60.35**

**FORMS**

- Special Verdict Forms, this index

**FRAUD AND DECEIT**

- Generally, **57.10 et seq.**
- Consumer fraud, **57.40, 57.92**
- Damages, **57.25**
- Insurance, application for insurance, **59.25**
- Material facts, duty to disclose, **57.30**
- Negligent misrepresentation, **57.20**
- Reasonable reliance, **57.15**
- Special verdict forms
  - Consumer fraud, **57.92**
  - Fraud, **57.90**
  - Insurance application misrepresentation, **59.90**
  - Negligent misrepresentation, **57.91**

**FRUSTRATION**

- Contracts, **20.79**
- Defenses, **20.79**

**GOOD CONDUCT**

- Fault and culpability, **25.12**
- Right to assume another's, **25.12**

**GOOD FAITH**

- Contract, **20.55**
- Employment claims, **55.66**
- Insurance, good faith duty to settle, **59.35**

**GROSS NEGLIGENCE**

- Fault and culpability, **25.35**

**HARBORING ANIMALS**

- Injuries caused by, **38.80**

**HEALTH CARE PROVIDER**

- Medical Malpractice, this index

**HINDRANCE**

- Performance of contract, defense, **20.56**

**HOSPITALS**

- Liability, medical malpractice, **80.37 et seq.**

## INDEX

### HOSPITALS—Cont'd

#### Medical malpractice

Duty of hospital, **80.37**

Following doctor's orders, liability of hospital, **80.40**

Liability, **80.40 to 80.46**

Third person, damage or injury to by patient, **80.46**

### HOTELS AND MOTELS

Duty of innkeeper, **85.70**

### IMMUNITY OR PRIVILEGE

Privilege or Immunity, this index

### IMPEACHMENT

Witnesses, **12.25**

### IMPLIED ACTS AND MATTERS

Fact of accident alone, no inference of negligence, **25.55**

Failure to produce evidence, **12.35**

### IMPOSSIBILITY

Contracts, **20.80**

Defenses, **20.80**

### IMPRISONMENT, FALSE

Intentional torts, **60.70**

### IMPUTED FAULT

Generally, **32.10 et seq.**

#### Consent

Adult, **32.15**

Adult deviation, **32.20**

Child, **32.25**

#### Motor vehicle owner

Generally, **32.10**

##### Consent/adult

Generally, **32.15**

Deviation, **32.20**

Revocation, **32.16**

Consent/child, **32.25**

Permission to use motor vehicle, **32.90**

Statutory imputation of liability, **32.15 et seq.**

Permission to use motor vehicle, **32.90**

### INDEPENDENT CONTRACTOR

Generally, **30.10**

Vicarious liability, **30.10**

### INFERENCE

Fact of accident alone, no inference of negligence, **25.55**

Failure to produce evidence, **12.35**

**INJURIES CAUSED BY ANIMALS**

Generally, **38.10 et seq.**

**INNKEEPER, DUTY OF**

Generally, **85.70**

**INSTRUCTIONS OR DIRECTIONS**

Compensatory damages, **90.20**

Medical malpractice

Departure from manufacturer's instructions, **80.16**

Patient's duty to follow instructions, **80.28**

Personal and property compensatory damages, **90.20**

**INSURANCE LAW AND PRACTICE**

Generally, **59.10 et seq.**

Agent and broker defined, **59.40**

Burden of proof

Coverage, **59.10**

Exclusion, **59.15**

Coverage

Burden of proof, **59.10**

Intentional injury or harm, **59.30**

Definition, agent and broker, **59.40**

Exclusions

Burden of proof, **59.15, 59.20**

Intentional injury or harm, **59.30**

Good faith duty to settle, **59.35**

Intentional injury or harm, **59.30**

Misrepresentation, application for insurance, **59.25, 59.90**

No-fault automobile insurance

Special verdict forms, **65.90**

Tort thresholds, **65.40**

Special verdict forms

Misrepresentation, application for insurance, **59.90**

No-fault auto insurance, **65.90**

Underinsured motorist insurance, **65.91**

Uninsured motorist insurance, **65.92**

Tort thresholds for no-fault automobile insurance, **65.40**

**INTENT**

Injury or harm. Intentional Injury or Harm, this index

Special verdict forms, vicarious liability, intentional tort, **30.92**

Torts, **60.10 et seq.**

Vicarious liability

Employee, scope of authority in intentional wrongs cases, **30.20**

Special verdict forms, intentional tort, **30.92**

**INTENTIONAL**

Generally, **60.10 et seq.**



## INDEX

### INTENTIONAL INJURY OR HARM

- Assault and batteries, **60.20, 60.25, 60.30 et seq.**
- Conversion, **60.65**
- Defense of persons and property, **60.30 et seq.**
- Emotional distress, intentional infliction of, **60.75**
  - Special verdict forms, **60.90**
- Informed consent, medical malpractice, **80.92**
- Insurance, **59.30**
- Intent and consent, **60.10, 60.15**
- Medical malpractice, **80.90, 80.92**
- Special verdict forms, intentional infliction of emotional distress, **60.90**

### INTERFERENCE

- Contractual relationship, **40.30**

### INTOXICATION

- Civil Damage Act, this index
- Effect, **25.14**
- Fault and culpability, **25.14**
- Negligence, **25.14**

### INTRUSION UPON SECLUSION

- Generally, **72.10**
- Special verdict form, **72.90**

### INVASION OF PRIVACY

- Appropriation, **72.15**
- Intrusion upon seclusion, **72.10**
- Public disclosure of private facts, **72.20**
- Special verdict forms
  - Appropriation, **72.91**
  - Intrusion upon seclusion, **72.90**
  - Public disclosure of private facts, **72.92**

### JOINT AND SEVERAL LIABILITY

- Primary assumption of risk, **28.30**
- Secondary assumption of risk, **28.25**

### JOINT ENTERPRISE

- Generally, **30.65**
- Vicarious liability, **30.65**

### JOINT VENTURE

- Generally, **30.70**
- Definition, **30.70**

### JURY AND JURY TRIAL

- Instructions regarding means of support and pecuniary loss, damages, **45.45**
- Preliminary instructions, before trial, **10.15**
- Recess of, **10.40**
- Separation of, **10.40**

**JUST COMPENSATION**

Eminent domain, **52.35 et seq.**

**JUSTIFICATION**

Business torts, **40.40**

**KEEPING ANIMALS**

Injuries caused by, **38.80**

**KEEPING OR HARBORING**

Injuries caused by animals, **38.80**

**LAND**

Property, this index

**LANDLORD AND TENANT**

Generally, **85.40 et seq.**

Duty of landlord, **85.40**

Duty of tenant, **85.40**

Eminent domain

Generally, **52.75**

Special verdict forms, **52.92**

**LEASES**

Landlord and Tenant, this index

Products liability, defendant in business of selling or leasing, **75.10**

Property, this index

**LEGAL MALPRACTICE**

Generally, **80.55 et seq.**

**LIABILITY**

Employer, **55.10 et seq.**

Hospital, **80.40 et seq.**

Multiple parties, **15.10**

Parent, **70.25**

Several, **15.10**

Strict, **38.93, 75.25**

**MALICE**

Actual, **50.35**

Defamation

Common law standard, **50.35**

Constitutional standard, **50.40**

**MALPRACTICE**

Attorney, **80.55**

Attorney-specialist, **80.58**

Medical Malpractice, this index

Professional

Architect, **80.75**

Attorney, **80.55 to 80.66**

Engineer, **80.75**

## INDEX

### **MALPRACTICE—Cont'd**

#### Professional—Cont'd

Medical, **80.10 to 80.46**

Public accountant, **80.75**

### **MANUFACTURING**

Component parts manufacturer, products liability, **75.96**

Medical malpractice, departure from manufacturer's instructions, **80.16**

Negligence, **75.35**

#### Products liability

Component parts manufacturer, **75.96**

Defects, **75.30**

Liability of manufacturer, **75.33**

Post-sale warnings, duty to provide, **75.40**

### **MEDICAL MALPRACTICE**

Generally, **80.10 et seq.**

Dentist, **80.10, 80.13**

#### Doctor

Generally, **80.10**

Duty to refer, **80.19**

Duty to refer, **80.19**

Health care provider, generally, **80.10**

#### Hospital

Generally, **80.37**

Liability for damage or injury to third person by patient, **80.46**

Liability for following doctor's orders, **80.40**

Negligence of physician or nurse, liability, **80.43**

Informed consent, special verdict form, **80.92**

#### Instructions

Departure from manufacturer's instructions, **80.16**

Patient's duty to follow instructions, **80.28**

Intentional torts, **80.90**

Loss of a chance for more favorable outcome, **80.11**

Wrongful death, special verdict form, **80.95, 80.96**

Loss of a chance for survival, **80.11**

Special verdict form, **80.93, 80.94**

Manufacturer's instructions, departure from, **80.16**

#### Medical consent

Informed, **80.25**

Negligent nondisclosure, **80.25**

Treatment/operation, **80.22**

More favorable outcome, loss of chance of, **80.11**

Special verdict form, **80.93, 80.94**

Nurse, **80.31**

Patient's duty to follow instructions, **80.28**

Specialist, medical/dental, **80.10**

Special verdict form, **80.90 to 80.96**



**MEDICAL MALPRACTICE—Cont'd**

Survival, loss of chance for, **80.11**

Special verdict form, **80.93, 80.94**

**MISTAKE**

Contracts or Agreements, this index

**MITIGATION OF DAMAGES**

Damages, this index

**MODIFICATION OR CHANGE**

Contracts, **20.41**

**MORTALITY TABLES**

Generally, App

**MULTIPLE PARTIES**

Generally, **15.10 et seq.**

Absent parties, **15.40**

Animals, injuries caused by, **38.92**

Apportionment of damages, **15.20**

Directed verdict, **15.30**

Negligence

Answered by court, **15.25**

Injuries caused by animals, **38.92**

Special verdict forms, **28.91, 28.92**

Separate claims, two or more plaintiffs, **15.10**

Settlement agreements, **15.35**

Several liability, two or more defendants, **15.15**

Special verdict forms, negligence, **28.91, 28.92**

**MUNICIPALITIES**

Negligence, official immunity, special verdict form, **25.90**

Official immunity, negligence, special verdict form, **25.90**

Sidewalk or street defects

Duty of municipality, **85.63**

Knowledge of municipality, **85.65**

Special verdict form, negligence, official immunity, **25.90**

**MUTUAL MISTAKE OF FACT**

Contracts, **20.76**

Defenses, **20.76**

**NEGLIGENCE**

Generally, **25.10 et seq.**

Alternative theories, **25.52**

Animals, injuries caused by

Generally, **38.70**

Single parties, **38.91**

Answered by court, **15.25**

Causation

Generally, **27.10 et seq.**

**NEGLIGENCE—Cont'd**

Causation—Cont'd

Concurring, **27.15**

Direct, **27.10**

Superseding, **27.20**

Comparative fault, **28.15**

Covenant to repair leased premises, negligent breach, **85.46**

Culpability, generally, **25.10 et seq.**

Custom, evidence of, **25.47**

Defamation, **50.45**

Defenses, **28.25, 28.30**

Definition, **25.10**

Emergency rule, **25.16**

Employee, vicarious liability, **30.15**

Employment claims

Hiring employees, **55.20**

Retention of employees, **55.30**

Supervision of employees, **55.25**

Fact of accident alone, no inference of negligence, **25.55**

Fault and culpability, generally, **25.10 et seq.**

Fraud and misrepresentation

Generally, **57.20**

Special verdict form, **57.91**

Good conduct, right to assume another's, **25.12**

Gross, **25.35**

Injuries caused by animals

Generally, **38.70**

Common law strict liability, **38.93**

Multiple parties, **38.92**

Single parties, **38.91**

Intoxication, **25.14**

Joint and several liability, **28.25, 28.30**

Leased premises

Covenant to repair, negligent breach, **85.46**

Negligent repair, **85.49**

Manufacturer or seller of goods, products liability, **75.35**

Medical malpractice, liability of hospital for negligence of physician or nurse,  
**80.43**

Medical malpractice, negligent nondisclosure, **80.25**

Motor vehicles, **65.10**

Municipalities, official immunity, special verdict form, **25.90**

Nontraffic statutes, violations of, **25.45**

Official immunity, special verdict form, **25.90**

Parental liability for torts of children

Negligent entrustment, **70.30**

Specific propensity, **70.25**

Products liability

Duty to warn, **75.25**

**NEGLIGENCE—Cont'd**

- Products liability—Cont'd
  - Manufacturer or seller of goods, **75.35**
- Railroad crossing, **48.45**
- Reckless defined, **25.37**
- Res ipsa loquitur, **25.50, 25.52**
- Special verdict forms
  - Municipalities, official immunity, **25.90**
  - Negligent hiring or retention, **30.92**
  - Official immunity, **25.90**
  - State, official immunity, **25.90**
  - Vicarious liability, **30.90, 30.92**
  - Wrongful death, **28.93**
- Specific, **25.52**
- State, official immunity, special verdict form, **25.90**
- Statutory compliance, **25.46**
- Subsequent remedial measures, **25.48**
- Vicarious liability, **30.15**
  - Negligent hiring or retention, **30.92**
  - Special verdict forms, **30.92**
- Willful conduct, **25.40**
- Wrongful death, special verdict forms, **28.93**

**NEXT OF KIN**

- Negligence, special verdict forms, **28.93**
- Special verdict form, negligence, **28.93**

**NO-FAULT AUTOMOBILE INSURANCE**

- Special verdict forms, **65.90**
- Tort thresholds, **65.40**

**NONLITIGANTS**

- Negligence, special verdict forms, **28.91**
- Special verdict forms, negligence, **28.91**

**NONTRAFFIC STATUTES**

- Generally, **25.45**

**NOTES TAKEN BY JURY**

- Duties of jury, **10.35**

**NOVATION**

- Contracts, **20.42**

**NUISANCES**

- Private
  - Generally, **60.80**
  - Trespass to land privilege, entry to abate, **60.86**
- Special verdict form, **60.95**

**NURSES**

- Medical malpractice, **80.31, 80.43**

## INDEX

### **NURSES—Cont'd**

Negligence, liability of hospital, **80.43**

### **OFFER OF CONTRACT**

Generally, **20.15 et seq.**

### **OFFICIAL IMMUNITY**

Municipality, negligence, special verdict form, **25.90**

Negligence, special verdict form, **25.90**

Special verdict form, **25.90**

State, negligence, special verdict form, **25.90**

### **PARENTAL LIABILITY FOR TORTS OF CHILDREN**

Negligent entrustment, **70.30**

Specific propensity, **70.25**

### **PARKING FACILITIES**

Parking ramp operator, **85.75**

### **PARKING RAMP OPERATOR**

Duty, **85.75**

### **PARTNERSHIP**

Generally, **30.50 et seq.**

Definitions

Partner, **30.50**

Partners, **30.50**

Scope of authority, **30.55**

Scope of authority defined, **30.55**

Vicarious liability, **30.50 et seq.**

### **PASSENGERS**

Affirmative duty of motor vehicle passenger, **65.20**

Common carrier, **48.15 et seq.**

Duty of motor vehicle passenger, **65.15, 65.20**

Motor vehicles, **65.15, 65.20**

### **PATIENT**

Medical malpractice, duty to follow instructions, **80.28**

### **PEACE OFFICER**

Deadly force used in defense of persons or property, **60.60**

Defense of persons or property, use of deadly force, **60.60**

Use of deadly force, **60.60**

### **PEDESTRIAN**

Common law duties, **65.10**

### **PENALTIES**

Employment claims, **55.68**

### **PERSONS, DEFENSE OF**

Generally, **60.30 et seq.**



**PHYSICIANS AND SURGEONS**

Medical Malpractice, this index

**POST-SALE WARNINGS**

Manufacturer's duty, **75.40**

Products liability, **75.40**

**PRELIMINARY INSTRUCTIONS**

Before trial, **10.15**

**PRELIMINARY MATTERS**

Jury instructions, before trial, **10.15**

**PRESUMPTIONS AND BURDEN OF PROOF**

Generally, **14.15**

Damages, **90.15**

Eminent domain, just compensation for, **52.30**

Insurance Law and Practice, this index

**PRINCIPAL-AGENT**

Punitive damages, agent and principal, **94.92**

Relationship, generally, **30.30**

Scope of authority, **30.30**

Special verdict form, punitive damages, **94.92**

Vicarious liability, **30.25**

**PRIVACY**

Appropriation, **72.15**

Special verdict form, **72.91**

Intrusion upon seclusion, **72.10**

Public disclosure of private facts, **72.20**

Special verdict form, **72.92**

Special verdict form, **72.90**

Appropriation, **72.91**

Intrusion upon seclusion, **72.90**

Public disclosure of private facts, **72.92**

**PRIVILEGE OR IMMUNITY**

Absolute and qualified, defamation

Generally, **50.30 et seq.**

Special verdict forms, **50.90**

Municipality, official immunity, special verdict form, **25.90**

Negligence, municipality, official immunity, special verdict form, **25.90**

Official Immunity, this index

Private nuisance, entry to abate, trespass to land privilege, **60.86**

Qualified and absolute. Absolute and qualified, defamation, above

Special verdict form

Municipality, official immunity, negligence, **25.90**

Official immunity, negligence, municipality, **25.90**

State, official immunity, negligence, **25.90**

State, official immunity, special verdict form, **25.90**

## INDEX

### PRIVILEGE OR IMMUNITY—Cont'd

Trespass to land privilege, entry to abate private nuisance, **60.86**

### PRODUCT DISPARAGEMENT

Generally, **40.15**

Business torts, **40.15**

### PRODUCTS LIABILITY

Generally, **75.10 et seq.**

Bailments, **75.45**

Causation, **75.50**

Circumstantial evidence, proof of defect, **75.32**

Component parts manufacturer, liability, **75.96**

Defects

Design, **75.20**

Special verdict form, **75.90, 75.94, 75.96, 75.98**

Existed when product left seller, **75.15**

Intermediaries other than manufacturers, **75.31**

Manufacturing defects, **75.30**

Defendant in business of selling or leasing, **75.10**

Duty to warn, **75.25**

Food, **75.60**

Intermediaries other than manufacturers

Defects, **75.31**

Liability, **75.95**

Manufacturer

Component parts manufacturer, **75.96**

Negligence, **75.35**

Post-sale warnings, **75.40**

Special verdict form, **75.92**

Manufacturing defects, **75.30**

Proof of defect, **75.32**

Seller of goods, negligence, **75.35**

Sophisticated intermediaries, **75.26**

Special verdict forms, **75.90 et seq.**

Strict liability, **75.25**

Useful life, **75.55**

### PROMISSORY ESTOPPEL

Generally, **20.50**

Contract, **20.50**

### PROPERTY

Abnormally dangerous activities, landlord and tenant, **85.55**

Adverse possession, **85.80**

Conversion of, **60.65**

Covenant to repair leased premises, negligent breach, **85.46**

Damages

Generally, **90.10 et seq.**

Mitigation of, **92.15**

**PROPERTY—Cont'd**

Defense of, **60.45 et seq.**

Eminent domain on non-contiguous tracts, **52.91**

Entrant

Generally, **85.22**

Definition, **85.22**

Duty of possessor to, **85.25, 85.28**

Innkeeper, duty of, **85.70**

Landlord, **85.40 et seq.**

Leased premises

Abnormally dangerous activities, **85.55**

Areas controlled by landlord, **85.43**

Building code violations, **85.50**

Latent defect, **85.40**

Negligent breach of covenant to repair, **85.46**

Negligent repair, **85.49**

Public use, **85.52**

Noncontiguous, eminent domain

Generally, **52.60**

Severance damages, definition, **52.60**

Special verdict forms for, **52.91**

Parking ramp operator, duty of, **85.75**

Public use of leased premises, **85.52**

Recreational use, **85.31**

Sidewalks and streets

Innkeeper's duty, **85.70**

Municipality, duty of, **85.63**

Owner, duty of, **85.60**

Slander of title, **85.82**

Tenant, **85.40 et seq.**

Trespasser, **85.10 et seq.**

**PROSPECTIVE ECONOMIC ADVANTAGE**

Interference with, **40.35**

**PROVOCATION**

Proximate cause, injuries caused by animals, **38.40**

**PROXIMATE CAUSE**

Animals, injuries caused by

Generally, **38.30, 38.60**

Acting peaceably, **38.50**

Provocation, **38.40**

**PUBLIC ACCOUNTANT**

Malpractice, **80.75**

Professional malpractice, **80.75**

**PUBLICATION**

Generally, **50.15**

## INDEX

### **PUBLICATION—Cont'd**

- Defamatory communication, **50.15**
- Private facts, public disclosure, **72.20**
  - Special verdict form, **72.20**
- Special verdict form, public disclosure of private facts, **72.92**

### **PUBLIC DISCLOSURE OF PRIVATE FACT**

- Invasion of privacy, generally, **72.20**
- Special verdict form, **72.92**

### **PUBLIC ISSUE**

- Generally, **50.10 et seq.**
- Defamation
  - Generally, **50.10 et seq.**
  - Special verdict forms, **50.95**
- Leased premises, public use, **85.52**

### **PUBLICITY**

- Public disclosure of private facts, generally, **72.20**
- Special verdict form, **72.92**

### **PUBLIC OFFICERS AND EMPLOYEES**

- Defamation
  - Generally, **50.10 et seq.**
  - Special verdict forms, **50.93, 50.94**
- Peace officer, use of deadly force in defense of persons or property, **60.60**

### **PUBLIC OFFICIAL OR FIGURE**

- Generally, **50.10 et seq.**

### **PUBLIC POLICY**

- Employment termination in violation of, **55.65**
- Whistleblower Act, **55.65**

### **PUNITIVE DAMAGES**

- Generally, **94.10**
- Agent and principal, special verdict form, **94.92**
- Employer-principal liability, **94.15**
- Liability for, **94.15**
- Special verdict forms, **94.90**

### **RAILROAD CROSSING**

- Generally, **48.45**

### **RAILROADS**

- Crossing, **48.45**

### **REASONABLE CARE**

- Generally, **25.10**
- Definition, **25.10**
- Parents and children, **70.10 et seq.**
- Products liability, **75.10 et seq.**



**REASONABLE FORCE**

Defense of persons or property, **60.63**

**REASONABLENESS**

Force or violence, defense of persons or property, **60.63**

**RECESS OR SEPARATION OF JURY**

Duties of jury, **10.40**

**RECKLESS CONDUCT**

Generally, **25.37**

Negligence, **25.37**

**RECKLESSNESS**

Reckless conduct, negligence, **25.37**

**RECREATIONAL USE**

Privately owned property, **85.31**

**REJECTION**

Contract offer, **20.30**

**RELIANCE**

Reasonable reliance, fraud and deceit, **57.15**

**REMEDIES**

Negligence, **25.48**

Subsequent remedial measures, **25.48**

**REPAIR**

Leased premises

Generally, **85.49**

Covenant to repair, negligent breach, **85.46**

**REPORTS**

Employment claims, **55.67**

**RES IPSA LOQUITUR**

Generally, **25.50**

Alternative theory, **25.52**

Negligence, **25.50, 25.52**

**RESPONDEAT SUPERIOR**

Civil Damage Act, sale of alcoholic beverages, **45.42**

Vicarious liability, employee's scope of authority, **30.20**

**REVOCATION**

Contract offer, **20.35**

Imputed fault, motor vehicle owner, consent/adult, **32.16**

Motor vehicle owner, consent/adult, **32.16**

**RISK**

Primary assumption, **28.30**

Secondary assumption, **28.25**

## **INDEX**

### **RULINGS ON OBJECTIONS TO EVIDENCE**

Duties of jury, **10.30**

### **SALES**

Products liability

Defendant in business of selling or leasing, **75.10**

Liability of seller of goods, **75.33**

### **SCIENTER**

Animals, injuries caused by

Defenses, **38.20**

Domestic animals, **38.10, 38.20**

Negligence, **38.93**

Domestic animals, injuries caused by, **38.20**

### **SELF DEFENSE**

Generally, **60.30, 60.35**

Death, force threatening, **60.35**

Serious harm, force threatening, **60.35**

Threat of death or serious harm, **60.35**

### **SEPARATE ACTS OR MATTERS**

Two or more plaintiffs, **15.10**

### **SEPARATE VERDICT**

Partial taking for eminent domain, **52.70**

### **SEVERAL LIABILITY**

Generally, **15.10**

### **SEVERANCE DAMAGES**

Generally, **52.55**

Definition, **52.55**

Eminent domain

Generally, **52.55 et seq.**

Special verdict forms, **52.90**

Noncontiguous property, **52.60**

Partial taking, **52.65**

Special verdict forms, **52.90**

### **SIDEWALKS**

Abutting property, duty of owner of, **85.60**

Actual knowledge of municipality of defect, **85.65**

Constructive knowledge of municipality of defect, **85.65**

Duty of municipality, **85.63**

Duty of owner of property abutting, **85.60**

### **SKIDDING**

Automobiles and highway traffic, **65.35**

### **SLANDER OF TITLE**

Duties of property owners, **85.82**

## **SOPHISTICATED INTERMEDIARIES**

Products liability, **75.26**

## **SPECIAL VERDICT FORMS**

Appropriation, **72.91**

Battery, **60.92**

Breach of contract, **20.90**

Civil assault, **60.91**

Civil Damage Act, **45.90 et seq.**

Civil damage act, **45.90 et seq.**

Comparative fault, **28.91 to 28.93**

Comparative negligence, **28.90**

Consequential damages, warranties, **22.92**

Contracts

Breach of contract, **20.90**

Damages, **22.92**

Defamation, **50.90 to 50.97**

Difference in value, damages for, warranties, **22.92**

Eminent domain, **52.90 to 52.92**

Emotional distress, intentional infliction, **60.90**

Fraud and misrepresentation, **57.90 to 57.92**

Incidental damages, warranties, **22.92**

Informed consent, **80.92**

Insurance, misrepresentation, application for insurance, **59.90**

Intrusion, **72.90**

Invasion of privacy, **72.90 to 72.92**

Legal malpractice, **80.97, 80.98**

Libel, **50.90 et seq.**

Medical malpractice, **80.90 to 80.96**

Multiple parties, negligence, **28.91, 28.92**

Negligence

Generally, **28.90 to 28.93**

Comparative fault, **28.91 to 28.93**

Comparative negligence, **28.90**

Multiple parties, **28.91, 28.92**

Next of kin, **28.93**

Nonlitigants, **28.91**

Official immunity, **25.90**

Surviving spouse, **28.93**

Wrongful death, **28.93**

Next of kin, negligence, **28.93**

No-fault automobile insurance, **65.90**

Nonlitigants, negligence, **28.91**

Nuisance, **60.95**

Privacy, **72.90 to 72.92**

Products liability, **75.90 et seq.**

Publication of private facts, **72.92**

Punitive damages, **94.90, 94.95**

## INDEX

### **SPECIAL VERDICT FORMS—Cont'd**

- Self defense, **60.92**
- Slander, **50.91, 50.92**
- Surviving spouse, negligence, **28.93**
- Warranty, **22.90, 22.92**

### **STATE**

- Negligence, official immunity, special verdict form, **25.90**
- Official immunity, negligence, special verdict form, **25.90**
- Special verdict form, negligence, official immunity, **25.90**

### **STATEMENTS OF COUNSEL AND JUDGE**

- Post-trial, **10.25**

### **STATUTES**

- Compliance, **25.46**
- Nontraffic statutes, violation, **25.45**

### **STRICT LIABILITY**

- Animals, common law strict liability for injuries caused by, **38.93**
- Products liability, duty to warn, **75.25**

### **SUPERSEDING CAUSE**

- Generally, **27.20**
- Negligence, **27.20**

### **SURVIVAL, LOSS OF CHANCE OF**

- Medical malpractice, **80.11**
- Special verdict forms, **80.93, 80.94**

### **SURVIVING SPOUSE**

- Negligence, special verdict forms, **28.93**
- Special verdict forms, negligence, **28.93**

### **TAXATION**

- Compensatory damages, **90.30**
- Damages, **90.30**

### **TEACHERS**

- Child, punishment by person other than parent, **70.35**
- Punishment of child, **70.35**

### **TENANTS**

- Landlord and Tenant, this index

### **TEXTBOOKS**

- Evidentiary instructions, **12.40**

### **THIRD PERSONS**

- Children, punishment by teacher or person other than parent, **70.35**
- Common carrier, duty to protect safety from, **48.25**
- Defense of, **60.36**
- Defense of property of, **60.48**
- Hospital, liability for, **80.46**



**THIRD PERSONS—Cont'd**

Medical malpractice, liability of hospital for damage or injury to by patient,  
80.46

**TORTS**

Employment-related claims, 55.10 et seq.

Tort thresholds, no-fault automobile insurance, 65.40

**TORT THRESHOLDS**

No-fault automobile insurance, 65.40

**TRADE SECRETS**

Generally, 40.20

Definition, 40.20

Misappropriation, 40.25

**TRAFFIC STATUTES**

Terms, definitions, 65.30

Violation, 65.25

**TRAFFIC STOPS**

Nontraffic statutes, negligence, 25.45

Statutes

Generally, 65.30

Violation of, 65.25

**TRESPASS**

Activities of owner or occupant causing injury, 85.16

Attractive nuisance, 85.19

Children, 85.19

Condition of premises causing injury, 85.13

Defense of dwelling against, 60.42

Defining, 85.10

Duty of possessor and entrant, 85.25

Duty of possessor to trespasser, 85.13, 85.16

Entry to abate private nuisance, 60.86

Recreational use, 85.31

**TRUTH**

Generally, 50.25

**UNDERINSURED MOTORIST INSURANCE**

Special verdict forms, 65.91

**UNDUE HARDSHIP**

Contracts, 20.80

Defenses, 20.80

**UNILATERAL MISTAKE OF FACT**

Contracts, 20.75

Defenses, 20.75

## INDEX

### UNINSURED MOTORIST INSURANCE

Special verdict forms, **65.92**

### USEFUL LIFE

Products liability, **75.55**

### USEFULNESS

Products liability, useful life, **75.55**

### VERDICT

Deliberation and return of, **10.45**

Directed verdict, **15.30**

Separate verdict, partial taking for eminent domain, **52.70**

Special Verdict Forms, this index

### VICARIOUS LIABILITY

Generally, **30.10 et seq.**

Agent

Generally, **30.25**

Scope of authority, **30.30**

Corporations, liability for conduct of employees, **30.60**

Definitions

Employee, **30.10**

Joint venture, **30.70**

Partnership, **30.50, 30.55**

Employee

Generally, **30.10**

Definition, **30.10**

Intentional wrong, **30.20**

Negligence, **30.15**

Scope of authority, **30.15, 30.20**

Independent contractor, **30.10**

Joint enterprise, **30.65**

Joint venture, **30.70**

Negligent hiring or retention, special verdict forms, **30.91**

Partnership

Generally, **30.50**

Definitions, **30.50, 30.55**

Scope of authority, **30.55**

Principal-agent relationship, **30.25, 30.30**

Scope of employment, special verdict forms, **30.90 to 30.92**

Special verdict forms

Generally, **30.90**

Intentional tort, **30.92**

Negligence, **30.90**

Negligent hiring or retention, **30.91, 30.92**

Scope of employment, **30.90 to 30.92**

### WARNINGS

Inadequate warnings, special verdict forms, **75.90, 75.98**

**WARNINGS—Cont'd**

Products liability

Duty to warn, **75.25**

Post-sale warnings, manufacturer's duty, **75.40**

Special verdict forms, inadequate warnings, **75.90, 75.98**

**WARRANTIES**

Generally, **22.10 et seq.**

Breach of warranty

Express, **22.50**

Fitness for particular purpose, implied of, **22.60**

Implied of fitness for a particular purpose, **22.60**

Implied warranty of merchantability, **22.55**

Merchantability, implied of, **22.55**

Causation, **22.65**

Consequential damages, **22.92**

Damages, generally, **22.70**

Difference in value, damages for, **22.92**

Exclusion or modification of, **22.40**

Express

Generally, **22.10**

Breach, **22.50**

By description, **22.15**

By model, **22.20**

By sample, **22.20**

Implied

Breach of warranty

Fitness for particular purpose, **22.60**

Merchantability, **22.55**

By course of dealing, **22.30**

Exclusion or modification by course of dealing, **22.45**

Exclusion or modification by usage of trade, **22.45**

Fitness for a particular purpose, **22.35**

Fitness for particular purpose, breach, **22.60**

Of merchantability, **22.25**

Merchantability, breach, **22.55**

Modification by course of dealing, **22.45**

Modification by usage of trade, **22.45**

Usage of trade, exclusion or modification by, **22.45**

Incidental damages, **22.92**

Modification of, **22.40**

Special verdict forms

Accident cases, **22.90**

Consequential damages, **22.92**

Damages, **22.92**

Difference in value, damages for, **22.92**

Incidental damages, **22.92**

Warranty damages, **22.92**

## INDEX

### **WHISTLEBLOWER ACT**

- Employment termination in violation of public policy, **55.65**
- Special verdict forms, **55.94**

### **WILLFUL AND WANTON MISCONDUCT**

- Negligence, **25.40**

### **WILLFUL CONDUCT**

- Generally, **25.40**

### **WITNESSES**

- Credibility of, **12.15**
- Evaluation of testimony, **12.15**
- Impeachment, **12.25**

### **WRONGFUL DEATH**

- Measure of damages, **91.75**
- Medical malpractice, special verdict forms, **80.95, 80.96**
- Negligence, special verdict forms, **28.93**
- Special verdict forms
  - Medical malpractice, **80.95, 80.96**
  - Negligence, **28.93**





























